TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 160.

PRISCILLA BRADFORD, APPELLANT,

vs.

ROBERT E. MORRISON.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

FILED APRIL 18, 1907.

(20,667.)

(20,667.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 280.

PRISCILLA BRADFORD, APPELLANT,

vs.

ROBERT E. MORRISON.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

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a PRISCILLA BRADFORD, Appellant,
vs.
R. E. MORRISON, Appellee.

Transcript on Appeal.

1 In the District Court of Yavapai County, Arizona.

PRISCILLA BRADFORD, Plaintiff,
vs.
ELMER R. MCDOWELL, R. E. MORRISON, and THOS. D. BENNETT, Defendants.

Complaint.

The plaintiff says: That she is the owner of those certain unpatented, lode, and contiguous group of mining claims, situate in the Big Bug Mining District, Yavapai County, Territory of Arizona, named and described as follows, to-wit:

The Blind Girl Mining Claim, the notice of location whereof is recorded at page Four Hundred Ninety-four (494) of Book Thirty-six (36) of Mining Records in the office of the County Recorder of said County.

The Henry Clay Mining Claim, the notice of location whereof is recorded at page Three Hundred and Sixty-five (365) of Book Thirty-one (31) of Mining Records in the office of the County Recorder of said County.

The George Washington Mining Claim, the notice of location whereof is recorded at page Three Hundred and Sixty-six (366) of Book Thirty-one (31) of Mining Records in the office of the County Recorder of said County.

That the Plaintiff is credibly informed and believes the Defendants and each of them make- some claim adverse to the complain-t to-wit the said Plaintiff.

2 Wherefore Plaintiff prays for the establishment of the complainant's the said Plaintiff's estate in said premises and that the Defendants and each of them be barred and forever estopped from having or claiming any right or title to the premises adverse to the complainant to-wit the said Plaintiff, and, that she recover her cost therein and have such other further or different relief as may be meet and proper in the premises. An answer under oath is waived.

E. M. SANFORD,
Attorney for Plaintiff.

TERRITORY OF ARIZONA, *County of Yavapai, ss*:

E. M. Sanford being first duly sworn by me says: I am the attorney for the Plaintiff, Priscilla Bradford, in the above entitled

action. That the Plaintiff is a non-resident of the Territory of Arizona and is now without the said Territory. That the facts therein stated are within personal knowledge of the affiant and that the allegations of the foregoing complaint are true in substance and in fact.

E. M. SANFORD.

Subscribed and sworn to before me this 17th day of November, 1904.

[SEAL.] J. M. WATTS, *Clerk.*

(Endorsed:) 3927. Priscilla Bradford *vs.* Elmer R. McDowell, *et al.* Complaint. Filed at 2 o'clock P. M. Nov. 16, 1904. J. M. Watts, Clerk.

3 In the District Court of Yavapai County, Arizona.

PRISCILLA BRADFORD, Plaintiff,

vs.

ELMER R. McDOWELL and THOS. D. BENNETT, Defendant-.

Affidavit of Service of Summons.

STATE OF CALIFORNIA, *County of Los Angeles, ss:*

J. W. Goodhue, of lawful age being first duly sworn says: I am and was during all the times hereinafter stated the duly appointed, qualified and acting Deputy Sheriff of the County of Los Angeles in the State of California. That I received the annexed summons in the case of Priscilla Bradford Plaintiff, Elmer R. McDowell, *et al.* No. 3927 issued by the above entitled court on the 21st day of November, 1904, and afterwards and on the 29th day of November, 1904, at said County of Los Angeles I served the same upon the therein named Elmer R. McDowell, by delivering to him personally a true copy of said summons together with a true copy of complaint in said action annexed thereto; and further, I personally know the person so served is the identical Elmer R. McDowell Defendant in said action; and further affiant sayeth not.

J. W. GOODHUE.

4 Subscribed and sworn to before me this 2nd day of December, 1904.

My commission expires June 24th, 1907.

[SEAL.] SAM'L PRAGER,

Notary Public, Los Angeles Co., Cal.

5 In the District Court of the Fourth Judicial District, Territory of Arizona, County of Yavapai.

No. 3927.

PRISCILLA BRADFORD, Plaintiff,
versus
ELMER R. MCDOWELL, R. E. MORRISON, and THOMAS D. BENNETT, Defendants.

Summons.

Action brought in the District Court of the Fourth Judicial District, in and for the County of Yavapai, Territory of Arizona.

The Territory of Arizona sends greeting to Elmer R. McDowell and R. E. Morrison and Thomas D. Bennett:

You are hereby summoned and required to appear in an action brought against you by the above named plaintiff in the District Court of the Fourth Judicial District, in and for the County of Yavapai, in the Territory of Arizona, and answer the complaint filed with the Clerk of this Court at Prescott, in said County (a copy of which complaint accompanies this Summons), within twenty days, (exclusive of the day of service), after the service upon you of this Summons, if served in this county; in all other cases thirty days, after the service of this Summons upon you (exclusive of the day of service).

And you are hereby notified that if you fail to appear and
6 answer the complaint as above required, the plaintiff will take judgment by default against you and judgment for costs and disbursements in this behalf expended.

Given Under my Hand and Seal of said Court, at Prescott, this 17th day of November A. D., 1904.

J. M. WATTS, *Clerk.*

(Endorsed:) No. 3927. In the District Court of the Fourth Judicial District, Yavapai County, Arizona. Priscilla Bradford *vs.* Elmer R. McDowell & Thos. D. Bennett. Summons. Filed Dec. 8th, 1904, at 2 o'clock P. M. J. M. Watts, Clerk. Rec. Nov. 31-04-11 A. M. S.

7 In the District Court of Yavapai County, Arizona Territory.

PRISCILLA BRADFORD, Plaintiff,
v.
ELMER R. McDOWELL, R. E. MORRISON, and THOS. D. BENNETT, Defendants.

Comes now Robt. E. Morrison and answering the complaint herein demurs to the same and for cause of demurrer shows that the same does not state facts sufficient to constitute a cause of action.

Wherefore said defendant prays judgment as to the sufficiency of said complaint.

ROBT. E. MORRISON,
In Propria Persona.

And for a second, other and different answer to said complaint said defendant denies that plaintiff is the owner of the mining claims described therein;

Admits that he has some claim adverse to the complaint, to-wit: the said plaintiff, in this to-wit: that said defendant is the assignee for value received of a certain judgment recovered by plaintiff in the District Court of the Fourth Judicial District of the Territory of Arizona, in and for the County of Yavapai, on the 23d day of December, 1899, for the sum of $2730.25 and interest thereon
8 at the rate of 1½% per month until paid, and costs of suit taxed at $19.35, in case No. —, wherein Thos. D. Bennett was plaintiff and Tom Taylor and E. G. Wager were defendants, which said judgment has been duly docketed in the office of the Clerk of said Court; and that said judgment ever since said 23d day of December, 1899, and down to the date hereof has been and is now a lien upon the mining property described in the complaint herein.

Wherefore, said defendant having fully answered prays judgment that said judgment be declared to be a lien upon the property described in the complaint and for costs.

ROBT. E. MORRISON,
In Propria Persona.

(Endorsed:) No. 3927. In the District Court, of the 4th Judicial District of the Territory of Arizona, in and for the County of Yavapai. Priscilla Bradford, Plaintiff *vs.* E. R. McDowell, *et al.*, Defendant. Answer of R. E. Morrison. E. M. Sanford, Att'y for Pl'f. Filed at 9:30 o'clock A. M. Dec. 21, 1904. J. M. Watts, Clerk.

9 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

PRISCILLA BRADFORD, Plaintiff,
v.
ELMER R. McDOWELL, R. E. MORRISON, and THOS. D. BENNETT, Defendants.

Amended Answer.

Comes now Robt. E. Morrison and files his amended answer to the complaint herein and demurs to the same and for cause of demurrer shows that the same does not state facts sufficient to constitute a cause of action.

Wherefore, said defendant prays judgment as to the sufficiency of said complaint.

____ ____,
In Propria Persona.

And for a second, other and different answer to said complaint said defendant denies that plaintiff is the owner of the mining claims therein described;

Admits that he has some claim adverse to the complaint, to-wit: the said plaintiff, in this to-wit: that said defendant is the assignee for value received of a certain judgment recovered by plaintiff in the District Court of said Fourth Judicial District on the 23d day of December, 1899, for the sum of $2730.25 and interest
10 thereon at the rate of 1 and ½% per month until paid, and costs of suit taxed at $19.35, in case No. 2611, wherein Thos. D. Bennett was plaintiff and Tom Taylor and E. G. Wager were defendants, which said judgment was duly docketed in the office of the Clerk of said Court on December 30, 1899, in Judgment Docket No. 2, at page 149; and that ever since the docketing of said judgment the same has been and is now a lien upon the mining property described in the complaint herein.

Wherefore, said defendant having fully answered prays judgment that said judgment be declared to be a lien upon the property described in the complaint and for costs of suit.

ROB'T E. MORRISON,
In Propria Persona.

Copy Rec'd June 16/05.

E. M. SANFORD,
Att'y for Plaintiff.

(Endorsed:) No. 3927. In the District Court of the 4th Judicial District of the Territory of Arizona, in and for the County of Yavapai. Priscilla Bradford, Plaintiff, *vs.* T. D. Bennett *et al.* Defendant-. Amended Answer. Filed at 9:40 o'clock A. M. Jun- 20, 1905. J. M. Watts, Clerk. Rob't E. Morrison, Attorney for Def't.

11 In the District Court of Yavapai County, Arizona.

PRISCILLA BRADFORD, Plaintiff,
vs.
ELMER R. McDOWELL, ROBT. E. MORRISON, and THOS. D. BENNETT, Defendants.

Judgment.

Comes now this cause on for hearing and comes the Plaintiff by her attorney E. M. Sanford, and comes the Defendant Robt. E. Morrison in person, and it appearing that Thos. D. Bennett has been personally served within the Jurisdiction of this Court, and it further appearing that Elmer R. McDowell has been duly served with process herein, and that his time for answering has long since elapsed, and his default for want of answering has been regularly entered, and the Court after hearing the evidence produced comes now and files its Findings of Fact and Conclusions of Law upon the issues joined between the Plaintiff and Defendant Robt. E. Morrison.

On consideration whereof it is adjudged and decreed that the Plaintiff is the owner of an undivided three-fourths estate in and to those certain unpatented lode mining claims situate in Big Bug Mining District, Yavapai County, Arizona.

The "Blind Girl" Mining Claim, the notice of location whereof is recorded at Page Four Hundred Ninety-Four of Book Thirty
12 Six of Mining Records in the office of the County Recorder of said County.

The "Henry Clay" Mining Claim, the notice of location whereof is recorded at Page Three Hundred Sixty five of Book Thirty one of said Mining Records.

The "George Washington" Mining Claim, the Notice of location whereof is recorded at Page Three Hundred Sixty six of Book Thirty One of said Mining Records.

And it is further adjudged and decreed that the title of the Plaintiff in and to said undivided three fourths estate in said Mining Claims be and the same is hereby quieted and established in the Plaintiff, Priscilla Bradford, as against the Defendants Elmer R. McDowell, Robt. E. Morrison and Thos. D. Bennett, and each of them, be and they are hereby barred and estopped from claiming and pretending that they, or either of them, claim any right, title or interest in and to said undivided three fourths estate in and to said Mining Claims.

It is further adjudged and decreed, that the Defendant Robt. E. Morrison is the owner of an undivided One fourth estate in and to said Mining Claims as against the Plaintiff, Priscilla Bradford, and the Defendants Thos. D. Bennett and Elmer R. McDowell and that said ownership of the said Robt. E. Morrison in and to an undivided one fourth estate of in and to said Mining Claims, be, and
13 the same is hereby established and quieted in him as against the Plaintiff and said other defendants, subject, nevertheless to the right of redemption as provided by law.

It is further adjudged and decreed, that Defendant Robt. E. Morrison do have and recover of and from the Plaintiff, Priscilla Bradford his costs in this behalf expended taxed at — Dollars.

Dated in open Court September 20, 1905.

RICHARD E. SLOAN, *Judge.*

(Endorsed:) 3927. In the District Court of Yavapai County, Arizona. Priscilla Bradford, Plaintiff, *vs.* Elmer R. McDowell, Robt. E. Morrison, and Thos. D. Bennett, Defendants. Judgment. Judgt. Book #8 p. 237. Judgt. Docket #2 p. 241. Filed at 2 o'clock P. M. Nov. 7, 1905. J. M. Watts, Clerk.

14 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

No. C 3927.

PRISCILLA BRADFORD, Plaintiff,
vs.
ELMER R. MCDOWELL, R. E. MORRISON, and THOS. D. BENNETT, Defendants.

Certificate Judgment Roll.

TERRITORY OF ARIZONA, *County of Yavapai, ss:*

I, J. M. Watts, Clerk of the District Court of the Fourth Judicial District of the Territory of Arizona, in and for the County of Yavapai, do hereby certify the above and foregoing to be a full, true and complete copy of the judgment entered in the above entitled cause, as recorded in Judgment Book No. 8 of said court, at page 237, and I further certify that the foregoing papers, hereto attached, constitute the Judgment Roll in said action.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, this 10 day of Nov. A. D., 1905.

[SEAL] J. M. WATTS,
Clerk District Court.

15 *Transcript.*

Be it remembered, that in the District Court of Yavapai County, Arizona, in a certain action lately pending in said Court wherein Priscilla Bradford is Plaintiff and Elmer McDowell, Thomas D. Bennett and Robt. E. Morrison are Defendants, numbered 3927, the following Minutes and Judgment were entered to-wit:—

Dec. 22, 1904.—This cause came on to be heard upon the Motion of the Plaintiff for a restraining order against the sale of certain property under execution; E. M. Sanford appearing for Plaintiff and Robt. E. Morrison appearing for the Defendants, and the Court after hearing the argument of counsel denies the Motion.

May 4, 1905.—Motion for cost bond coming on to be heard, E. M. Sanford appearing for Plaintiff and R. E. Morrison for Defendants, Motion is granted and Plaintiff allowed 20 days in which to file good and sufficient cost bond.

June 20, 1905.—On motion of E. M. Sanford, Esq., case is placed on the calendar. This cause coming on to be heard before the Court sitting without a jury E. M. Sanford appearing for the Plaintiff and Robt. E. Morrison for the defendants. By agreement of
16 counsel the cause is submitted upon an agreed Statement of Facts with leave to Defendants to file brief in ten days.

September 30, 1905.—This cause having been heretofore tried and submitted and the Court having considered the same and being duly advised in the premises files its Findings of Fact and Conclusions of Law. It is ordered that Judgment be entered establishing the Plaintiff's title to an undivided three fourths estate in the mining claims described in the complaint as against all the defendants and that the Defendant R. E. Morrison have Judgment against the Plaintiff and his co-defendants establishing his title to an undivided One fourth estate in said mining claim subject nevertheless to the right of redemption.

Judgment.

Comes now this cause on for hearing and comes the plaintiff by her attorney E. M. Sanford, and comes the Defendant Robt. E. Morrison in person, and it appearing that Thos. D. Bennett has been personally served within the Jurisdiction of this Court, and it further appearing that Elmer R. McDowell has been duly served with process herein, and that his time for answering has long since elasped, and his default for want of answering has been regularly entered, and the Court after hearing the evidence produced comes now and files its Findings of Fact and Conclusions of Law upon the issues joined between the Plaintiff and Defendant Robt. E. Morrison.

On consideration whereof it is adjudged and decreed that
17 the Plaintiff is the owner of an undivided Three-fourths estate in and to those certain unpatented lode mining claims situate in Big Bug Mining District, Yavapai County, Arizona.

The "Blind Girl" Mining Claim, the notice of location whereof is recorded at Page Four Hundred Ninety four of Book Thirty six of Mining Records in the office of the County Recorder of said County.

The "Henry Clay" mining Claim, the notice of location whereof is recorded at Page Three Hundred Sixty five of Book Thirty one of said Mining Records.

The "George Washington" Mining Claim, the notice of location whereof is recorded at Page Three Hundred Sixty six of Book Thirty One of said Mining Records.

And it is further adjudged and Decreed that the title of the Plaintiff in and to said undivided three fourths estate in said mining claims be and the same is hereby quieted and established in the Plaintiff, Priscilla Bradford, as against the Defendants Elmer R.

IcDowell, Robt. E. Morrison and Thos. D. Bennett, and each of hem, be and they are hereby barred and estopped from claiming nd pretending that they, or either of them, claim any right, title r interest in and to said undivided three fourths estate in and to said lining Claims.

It is further adjudged and decreed, that the Defendant Robt. E. Morrison is the owner of an undivided One fourth estate in and to said Mining Claims as against the Plaintiff. Priscilla Bradford, and the Defendants Thos. D. Bennett and Elmer . McDowell and that said ownership of the said Robt. E. Morrison and to an undivided one fourth estate of in and to said Mining laims, be, and the same is hereby established and quieted in him against the Plaintiff and said other Defendants, subject, nevertheless to the right of redemption as provided by law.

It is further adjudged and decreed, that Defendant Robt. E. Morson do have and recover of and from the Plaintiff. Priscilla Bradrd his costs in this behalf expended taxed at — Dollars.

Dated in open Court September 20, 1905.

RICHARD E. SLOAN, *Judge.*

October 23, 1905.—This cause having on this day come on to be eard upon a Motion for a New trial therein reciting as a Motion r a new trial of the issues joined between the Plaintiffs and Dendants Thos. D. Bennett and R. E. Morrison, and by consent taken fore the Court as a motion for a new trial of the issues joined on the Complaint and the amended answer of R. E. Morrison and mes the respective parties by their attorneys and said motion be- argued and submitted to the Court, the said Motion for a new trial is denied to which ruling the Plaintiff excepts.

On Motion of Plaintiff the Supercedeas Appeal Bond herein is fixed in the sum of One Thousand Dollars.

Thereupon the Plaintiff gave notice in open Court of an appeal the Supreme Court of the Territory of Arizona from the Judgment ndered herein in favor of R. E. Morrison and against the Plaintiff, d also for an order denying the Motion for a new trial.

By consent it is ordered that the Plaintiff is given thirty days er the expiration of this term of Court in which to file a Bill of ceptions herein.

October 27th, 1905.—Court adjourned *Sine Die.*

RRITORY OF ARIZONA, *County of Yavapai, ss:*

I, J. M. Watts, Clerk of the District Court of the Fourth Judicial strict, of the Territory of Arizona, sitting in and for the County Yavapai, do hereby certify that I have compared the foregoing h the original minutes and Judgment in the above named action, l the same is a full, true and complete copy thereof, and of the ole thereof, as the same appears of record in my office.

Witness*eth*, my official hand and seal of said Court this — day of vember, 1905.

—— ——, *Clerk.*

20 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

PRISCILLA BRADFORD, Plaintiff,
vs.
ELMER R. MCDOWELL, ROBT. E. MORRISON, and THOS. D. BENNETT, Defendants.

Findings of Fact, Conclusions of Law.

This cause came on for trial on the 20th day of June, 1905, before the Court sitting without a jury, a jury having been expressly waived, upon the complaint and amended answer of defendant, Robt. E. Morrison, E. M. Sanford, appearing for plaintiff, and Robt. E. Morrison, appearing for defendant R. E. Morrison, and thereupon said cause was submitted to the Court for decision upon an agreed statement of facts dated June 19, 1905, and duly filed on the 20th day of June, 1905, and the Court having fully considered the cause, filed the following Findings of Fact and Conclusions of Law:

Findings of Fact.

I.

That at the dates of the making of the respective locations hereinafter described the ground covered thereby was unoccupied public mineral lands of the United States of America, and then open to exploration and discovery of minerals.

21 II.

That on June 24, 1893, John W. Morse and Geo. W. Wickler citizens, discovered mineral in place upon, and duly located on that date the Blind Girl Lode Mining Claim, situate in Big Bug Mining District, Yavapai County, Arizona, notice of location whereof was on June 29, 1893, duly recorded at page 494, of Book 36 of Mining Records, in the office of the County Recorder of said Yavapai County, that on December 18, 1890, D. C. Wood, a citizen, discovered mineral in place upon and duly located the Henry Clay and George Washington mining claims in said Mining District, and afterwards and on January 29, 1891, the location notices thereof were duly recorded in the office of the County Recorded as follows: The location notice of the Henry Clay, at page 365, of Book 31 of said records, and the notice of the location of the George Washington at page 366, of Book 31 of said records; that said locations are contiguous;

III.

That on February 15, 1898, said Geo. W. Wickler conveyed by deed, his interest in said Blind Girl location, to said D. C. Wood; that on September 12, 1898, the interest of said John W. Morse in said Blind Girl location, became vested in said D. C. Wood, by virtue of proceedings theretofore had for forfeiture of said Morse's interest

as co-owner, for want of payment to said Wood as co-owner, of annual assessment work on said location in previous years done by said Wood thereon. That on February 11, 1898, id Wood conveyed to E. G. Wager an undivided one-half interest and to said mining claims which said deed was recorded on April 1898, at page 616 of Book 42, of Deed Records of said County re-rder's office.

IV.

That said E. G. Wager on the delivery of said deed by said Wood said Wager thenceforward continuously to and until the delivery conveyance from said Wood, Wager and Reese M. Ling to the cor-ration as hereinafter mentioned, held the paper title to an undi-led one-fourth interest in said mining claims in trust for the use d benefit of Reese M. Ling.

V.

That on December 23, 1899, in a certain action then pending in *in* s Court, wherein Thos. D. Bennett is plaintiff, and the same E. G. ager and one Tom Taylor are defendants, said plaintiff recovered judgment against said defendants for the sum of $2703.25 with erest thereon at the rate of one and one half per cent. per month, til paid, and costs of suit taxed at $19.35, which said judgment s afterwards and on December 30, 1899, duly docketed in the office the Clerk of said Court.

VI.

That on December 23, 1899, the date as aforesaid, of the said judgment and continuously thereafter, until August 27, 1900, the interests of the actual co-owners in said mining ims were as follows, to-wit: said D. C. Wood, of an undivided one-f; said E. G. Wager of an undivided one-fourth, and said Reese Ling of an undivided one-fourth.

VII.

That on August 27, 1900, said D. C. Wood, E. G. Wager, and ese M. Ling for a valuable consideration, by a deed in the form own as a Mining Deed, sold and conveyed the said mining claims the McCabe Extension Mining and Milling Company, a corpora-n, having the power to take and receive like conveyances and hold erest in mining claims, which said deed was contemporeneously h its execution delivered to said corporation and said deed was reafter and on February 12, 1901, duly recorded in said Re-der's office at page 408 of Book 53 of Deed Records.

VIII.

That contemporaneously with the delivery of said deed, said ntors placed the said corporation in the actual and exclusive pos-ion and occupation of said mines, and said corporation and its gnee, the plaintiff herein, has thenceforward continuously been is now in the actual and exclusive possession of said Mines, and lusively performing each and every year after the year 1900, to

this date, annual labor in excess of the amount of one hun-
24 dred dollars per annum upon each of said mining claims, and said corporation has during its said possession of said mining claims expended more than forty thousand dollars in improvements in and on said mines.

IX.

That the said Wager, Wood, and Ling, nor either of them nor any one of them or either of them have not since August 27, 1900, been in the possession of any of said mining claims, and they nor any one of them or either of them, have not since that date, done or performed on said mines or either of them any work, labor, or improvement constituting annual labor required by the mining laws of Congress to be done on lode claims.

X.

That said mining claims have never been patented and the fee to the ground covered by the locations thereof is held by the United States of America.

XI.

That on November 6, 1902, Amy Hill filed a lien in the office of said County Recorder against said Henry Clay mining claim for materials furnished said McCabe Extension Mining and Milling Company, (now designated as and hereinafter referred to as the Company), and on April 4, 1903, an action was brought by said Amy Hill against said company to foreclose said lien, in this Court, and numbered as action 3609.

25 That on March 20, 1903, J. H. Farrell filed a lien in said Recorder's office against said Henry Clay mining claim for labor done for and material furnished said Company, and afterwards and on April 6, 1903, an action was commenced by said Farrell against said Company, in this Court to foreclose said lien, and numbered 3612.

That afterwards the said actions 3609 and 3612, were duly consolidated and afterwards and on December 4, 1903, such proceedings were therein had as that said Farrell duly recovered a judgment against said company for $1068.00 and costs taxed at $42.70, and said Amy Hill duly recovered a judgment against said Company for $1217.83, and costs taxed at $38.85, and a decree was then entered foreclosing said liens against said Henry Clay Mining Claim, and directing a sale of said mining claim.

That on March 1, 1904, an order of sale on the judgments so rendered in said consolidated actions was duly issued directed to the Sheriff of Yavapai County and thereunder on March 26, 1904, the said Henry Clay mining claim, was by said Sheriff sold to Thomas C. Job, for the sum of $2656.87, then paid to said Sheriff, and the Sheriff then issued the duplicate certificate of sale thereon as required by law, one whereof was duly recorded.

That on September 26, 1904, said Thomas C. Job, for valuable

consideration, to-wit: the principal and interest therein due
26 on the purchase price at said Sheriff's sale then paid to said Job, did sell and assign said certificate of sale to this plaintiff, and thereafter and on October 26, 1904, the said Sheriff duly executed and delivered to this plaintiff a sheriff's deed, conveying to her under said judgment, in said consolidated actions, the said order of sale, and the sale aforesaid, thereunder the said Henry Clay mining claim, which said deed was recorded in said Recorder's office on October 26, 1904, at page 274, of Book 69 of Deed Records.

XII.

That on June 25, 1903, in a certain action then pending in this Court wherein R. H. Burmister & Sons Company is plaintiff, and said McCabe Extension Mining and Milling Company is defendant a judgment was rendered in favor of said plaintiff and against the company for the sum of $1081.21, debt, and costs taxed at $16.55, and the attachment lien dating from June 25, 1903, therein was duly foreclosed against all of said mining claims.

That on September 30, 1904, an order of sale was issued on said judgment directed to the Sheriff of said county, commanding him to sell said mining claims, and under said order of sale the said Sheriff on October 31, 1904, duly sold said mining claims to this plaintiff for the sum of $2051.00 then paid by said plaintiff to the said Sheriff and thereupon the usual duplicate certificates of
7 sale thereof were by said Sheriff delivered to the plaintiff.

That since the commencement of the action at Bar the said Sheriff has executed and delivered to this plaintiff a Sheriff's deed conveying under said judgment, order of sale and Sheriff's sale, the said mining claims to this plaintiff.

XIII

That on October 25, 1904, in an action then pending in this Court wherein this plaintiff is therein plaintiff, and said company defendant, the plaintiff duly recovered a judgment against the company for the sum of $1946.55, together with costs taxed at $76.65, and foreclosing an attachment lien therein against said mining claims. That on October 26, 1904, an order of sale was duly issued on said judgment directed to the Sheriff of this county commanding him to sell said mining claims, according to law and thereafter and on November 21, 1904, said Sheriff, under said order of sale, duly sold at public sale all of said mining claims to this plaintiff for the sum of $500.00, then paid by plaintiff to said Sheriff and thereupon the said Sheriff executed and delivered to this plaintiff the usual duplicate certificates of sale evidencing said sale.

XIV.

That on November 29, 1904, an execution in due form of law was issued on said judgment of Bennett against E. G. Wager and Tom Taylor, for the sum of $2703.25, and interest thereon at the rate of 1 and ½ % per month, from December 23, 1889, until paid and costs taxed at $19.35, and directed and delivered

to the Sheriff of this county and thereunder on November 29, 1904, said Sheriff levied said execution upon an undivided one-half interest in said mining claims as the property of said E. G. Wager, and thereafter under said execution and levy the said Sheriff on December 22, 1904, sold, as required by law, among other properties, the said undivided one-fourth interest in said mining claims to Robt. E. Morrison, defendant, for the sum of $2500.00 then paid to said Sheriff, and thereupon duplicate certificates of sale were issued and delivered by said Sheriff to said Morrison, evidencing said sale.

XV.

That on the — day of ——, 190–, and before the commencement of this action, the judgment recovered by Thos. D. Bennett against E. G. Wager and Tom Taylor in case No. 2611 in this Court, was for value received assigned to defendant Robt. E. Morrison, and from the date of said assignment down to and including the time of the filing of the complaint herein and ever since said defendant Robt. E. Morrison has continued to be the assignee of said judgment, and that said defendant Robt. E. Morrison claims an interest in said mining claims under the certificate of sale mentioned in Par. 14 hereof and in no other way. That the plaintiff claims title and interest in said mining claims under the deeds and certificates of sale mentioned in Paragraphs 11, 12, and 13, herein, and in no other way.

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From the foregoing Findings of Fact the Court finds as Conclusions of Law.

1. That the Plaintiff is the owner of an undivided three fourths estate of the mining claims mentioned in the Complaint, and is entitled to a judgment establishing her title in such estate as against all the Defendants.

2. That upon the docketing in the office of the Clerk of said Court on December 30, 1899, in Judgment Docket No. 2, at page 149, of the judgment rendered on the 23d day of December, 1899, in said case No. 2611 wherein Thos. D. Bennett was plaintiff, and Tom Taylor and E. G. Wager were defendants, the said judgment became a judgment lien upon an undivided one-fourth interest in and to the unpatented mining claims described in plaintiff's complaint, to-wit: the Blind Girl Lode Mining Claim, Henry Clay Mining Claim, George Washington Mining Claim, and that the lien continued from the date of said docketing to be a judgment lien upon said interest in said property and was such lien at the time of the filing of the complaint herein, and that such lien so continued at the time of the issuance of the execution on November 29, 1904, which said execution was issued on said judgment of Thos. D. Bennett against E. G. Wager and Tom Taylor, and that upon the Sheriff's sale of the property hereinbefore described, and specially mentioned in Plaintiff's Compaint herein, under said execution, the purchaser at said sale, Robt. E. Morrison, one of the defendant's herein, was substituted to and acquired all the right, title, interest, and claim of the judgment debtors in and to said mining claims, and by reason thereof became the owner of an

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undivided one-fourth interest in and to said mining claims, subject to redemption as provided by law, and the said Robt. E. Morrison is entitled to a judgment establishing his title in and to a one-fourth estate in said mining claims as against the Plaintiff and his co-defendants and that he recover his costs herein.

Let a decree be entered accordingly.

Dated in open Court September 30, 1905.

RICHARD E. SLOAN, *Judge.*

(Endorsed:) No. 3927. In the District Court of the 4th Judicial District of the Territory of Arizona, in and for the County of Yavapai. Priscilla Bradford, Plaintiff *vs.* Thos. D. Bennett, *et al.* Defendant-. Findings and judgment. Service accepted Oct. 31, 1905.

31 In the District Court of Yavapai County, Arizona.

PRISCILLA BRADFORD, Plaintiff,

vs.

ELMER R. MCDOWELL and R. E. MORRISON, THOS. D. BENNETT, Defendants.

Affidavit for Publication of Summons.

TERRITORY OF ARIZONA, *County of Yavapai, ss:*

E. M. Sanford being duly sworn says: I am the attorney for the Plaintiff in the above entitled action. The Defendant Elmer R. McDowell is a non-resident of the Territory of Arizona.

E. M. SANFORD.

Subscribed and sworn to before me this 17th day of November, 1904.

[SEAL.] J. M. WATTS, *Clerk.*

(Endorsed:) 3927. Priscilla Bradford *v.* McDowell, *et al.* Affidavit for publication of summons. Filed at 2 o'clock P. M. Nov. 16, 1904. J. M. Watts, Clerk.

32 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

PRISCILLA BRADFORD, Plaintiff,

vs.

E. R. MCDOWELL ET AL., Defendants.

Motion for Cost Bond.

Come now the above named defendants and move that the Court shall rule the plaintiff to give security for costs herein for the reason that plaintiff is non-resident of the Territory of Arizona.

ROBT. E. MORRISON,
Attorney for Defendants.

ARIZONA TERRITORY, *County of Yavapai, ss:*

Robt. E. Morrison being first duly sworn, deposes and says: That he is one of the defendants above named; that the said plaintiff, Priscilla Bradford, is a non-resident of the Territory of Arizona.

ROBT. E. MORRISON.

Subscribed and sworn to before me this 4th day of May, 1905. My commission expires June 24, 1907.

[SEAL] ALLEN HILL,
Notary Public.

(Endorsed:) 3927. District Court, 4th District, Yavapai Co. Bradford *v.* McDowell, *et al.* Mot. for cost bond. Filed at 10 o'clock A. M. May 24, 1905. J. M. Watts, Clerk.

33 In the District Court of Yavapai County, Arizona.

No. 3927.

PRISCILLA BRADFORD, Plaintiff,
vs.
THOMAS D. BENNETT ET AL., Defendants.

Motion for New Trial.

Comes now the Plaintiff and Moves for a new trial of the issues joined between the Plaintiff, and the Defendants Thomas D. Bennett, and R. E. Morrison upon the following grounds, to-wit:—

First. The Court erred in construing the term "real property" in Section 4 of Act 50 of the Laws of 1891 to include the estate held by an owner in an unpatented mining claim.

Second. The court erred in holding that under the Statutes of this Territory, that a judgment docketed under its laws in the office of the Clerk of the Court became a lien upon the estate of an owner in an unpatented mining claim.

Third. The Court erred in holding that the levy of the execution on November 29th, 1904, related back to the date of docketing the Judgment herein.

Fourth. The Court erred, — that the specific lien of the levy of execution of November 29th, 1904, vested an estate in the Defendants Bennett and Morrison as against the estate of this Plaintiff
34 in said property.

Fifth. The Court erred in its conclusions of Law in favor of said Defendant and against this Plaintiff.

Sixth. The Court erred in holding that under the laws of this Territory the docketing of a Judgment created a lien upon the estate of an owner in an unpatented mining claim.

Seventh. The Court erred in holding that the estate and interest of an owner in an unpatented mining claim is the subject of a Judgment lien in this Territory.

Eighth. The Court erred in rendering Judgment in favor of Defendants Bennett and Morrison and against the Plaintiff.

E. M. SANFORD.
Attorney for Plaintiff.

(Endorsed:) 3927. Priscilla Bradford *v.* Bennett, *et al.* Motion for new trial. Filed Oct. 2, 1905. J. M. Watts, Clerk.

35 In the District Court of Yavapai County, Arizona.

PRISCILLA BRADFORD, Plaintiff,
vs.
ELMER R. McDOWELL, ROBT. E. MORRISON, and THOS. BENNETT, Defendants.

Statement of Facts.

The plaintiff, and defendants Robt. E. Morrison and Thos. Bennett, in support of the issues on their part joined, stipulate that upon ne trial of said cause, said issues may be submitted upon the following facts and the said facts are all the facts in said cause.

1. That at the dates of the making of the respective locations hereinafter described the ground covered thereby was unoccupied public mineral lands of the United States of America, and then open to exploration and discovery of minerals.

2. That on June 24, 1893, John W. Morse and Geo. W. Wickler, citizens, discovered mineral in place upon, and duly located on that te the Blind Girl Lode Mining Claim, situate in Big Bug Mining istrict, Yavapai County, Arizona, the notice of location whereof as on June 29, 1893, duly recorded at page Four Hundred Ninety our, of Book Thirty six, of Mining records in the office of the County Recorder of said county; That on December 18, 1890, D. C. Wood, a citizen, discovered mineral in place upon and duly located the Henry Clay and George Washington ning Claims in said District and afterwards and on January 29, 91, the location notices thereof were duly recorded in the office of d county recorder as follows: The location notice of the Henry y, at page Three Hundred Sixty Five, of Book Thirty one, of d records, and the notice of location of the George Washington page Three Hundred Sixty Six, of Book Thirty One of said rec-s. That said locations are contiguous.

3. That on February 15, 1898, said Geo. W. Wickler conveyed deed, his interest in said Blind Girl location, to said D. C. Wood; at on September 12, 1898, the interest of said John W. Morse in l Blind Girl location, became vested in said D. C. Wood, by virtue proceedings theretofore had for forfeiture of said Morse's interest co-owner, for want of payment to said Wood as co-owner, of an-l assessment work of said location in previous years done by the Wood thereon. That on February 11, 1898, said Wood coned by deed, to E. G. Wager, an undivided one-half interest in

and to said mining claims which said deed was recorded on April 1, 1898, at page Six Hundred Sixteen of Book Forty Two, of deed records of said County Recorder's Office.

4. That said E. G. Wager, on the delivery of said deed by said Wood to said Wager, thenceforward continuously to and until the delivery and conveyance from said Wood, Wager and Reese
37 M. Ling to the corporation as hereinafter mentioned, held the paper title to an undivided one fourth interest in said mining claims in trust for the use and benefit of Reese M. Ling.

5. That on December 23, 1899, in a certain action then pending in this court, wherein Thos. D. Bennett, is plaintiff, and the same E. G. Wager and one Tom Taylor are defendants, said plaintiff recovered a judgment against said defendants for the sum of Two Thousand Seven Hundred Three Dollars and Twenty-Five cents with interest thereon at the rate of one and one half per cent. per month, until paid, and costs of suit taxed at Nineteen Dollars, and Thirty-five cents, which said Judgment was afterwards and on December 30, 1899, duly docketed in the office of the Clerk of this Court.

6. That on December 23rd, 1899, the date as aforesaid, of the said judgment and continuously thereafter, until August 27, 1900, the interests of the actual co-owners in said mining claims were, as follows, to-wit: Said D. C. Wood of an undivided one half; the said E. G. Wager of an undivided one fourth, and the said Reese M. Ling of an undivided one fourth.

7. That on August 27, 1900, said D. C. Wood, E. G. Wager and Reese M. Ling for a valuable consideration, by a deed in the form known as a Mining Deed, sold and conveyed the said mining claims to the McCabe Extension Mining and Milling Company a cor-
38 poration, having power to take and receive like conveyances and hold interests in mining claims which said deed was contemporaneously, with its execution delivered to said corporation and said deed was thereafter and on February 12, 1901, duly recorded in said recorder's office at page four Hundred Eight of Book Fifty Three of deed records.

8. That contemporaneously with the delivery of said deed, said grantors placed the said corporation in the actual and exclusive possession and occupation of said mines, and said corporation and its assignee, the plaintiff herein, has thenceforward continuously been and is now in the actual and exclusive possession of said Mines and exclusively performing each and every year after the year 1900, to this date annual labor in excess of the amount of One Hundred Dollars per annum upon each of said claims, and said corporation has during its said possession of said mining claims expended more than forty thousand dollars in improvements in and on said mines.

9. That the said Wager, Wood and Ling, nor either of them nor any one for them or either of them have not since August 27, 1900, been in the possession of any of said mining claims, and they nor any one for them or either of them, have not since that date, done or performed on said mines or either of them any work, labor
39 or improvement constituting annual labor required by the mining laws of Congress to be done on lode claims.

10. That said Mining Claims have never been patented and the fee to the ground covered by the locations thereof is held by the United States of America.

11. That on November 6, 1902, Amy Hill filed a lien in the office of said County Recorder against said Henry Clay Mining Claim for materials furnished said McCabe Extension Mining and Milling Company, (now designated as and hereinafter referred to as the Company), and on April 4, 1903, an action was brought by said Amy Hill against said company to foreclose said lien, in this court and numbered as action 3609.

That on March 20, 1903, J. H. Farrell filed a lien in said Recorder's Office against said Henry Clay Mining claim for labor done for and material furnished said Company and afterwards and on April 6, 1903, an action was commenced by said Farrell against said Company, in this court, to foreclose said lien, and numbered 3612.

That afterwards the said actions 3609 and 3612, were duly consolidated and afterwards and on December 4, 1903, such proceedings were therein had as that said Farrell duly recovered a judgment against said company for One Thousand Sixty Eight Dollars, and costs taxed at Forty Two Dollars and Seventy cents, and Amy Hill, duly recovered a judgment against said Company for One Thousand Two Hundred and Seventeen Dollars and Eighty Three Cents, and costs taxed at Thirty Eight Dollars and eighty five cents, and a decree was then entered foreclosing said liens against said Henry Clay Mining claim, and directing a sale of said mining claim.

That on March 1, 1904, an order of sale on the judgments so rendered in said consolidated actions was duly issued directed to the Sheriff of this county and thereunder on March 26, 1904, the said Henry Clay Mining Claim, was by said Sheriff sold to Thomas C. Job, for the sum of Two Thousand Six Hundred Fifty six Dollars and eighty seven cents, then paid to the said Sheriff, and the Sheriff then issued the duplicate Certificate of sale thereon as required by law, one whereof was duly recorded.

That on September 26, 1904, said Thomas C. Job, for valuable consideration, to-wit, the principal and interest therein due on the purchase price at said Sheriff's sale then paid to said Job, did sell and assign said certificate of sale to this plaintiff, and thereafter and on October 26, 1904, the said Sheriff duly executed and delivered to this plaintiff, a sheriff's deed, conveying to her under said judgment, in said consolidated actions, the said order of sale, and the sale aforesaid, thereunder the said Henry Clay Mining Claim, which said deed was recorded in said recorder's office on October 26, 1904, at page Two Hundred Seventy Four of Book Sixty Nine of said records.

12. That on June 25, 1903, in a certain action then pending in this court wherein R. H. Burmister & Sons Company is plaintiff, and said McCabe Extension Mining and Milling Company is defendant a judgment was rendered in favor of said plaintiff and against the company for the sum of One Thousand Eighty One Dollars and Twenty one Cents, debt and costs taxed at

Sixteen Dollars and Fifty Five Cents, and the attachment lien dating from June 25, 1903, therein was duly foreclosed against all of said Mining claims;

That on September 30, 1904, an order of sale was issued on said judgment directed to the Sheriff of said county, commanding him to sell said mining claims, and under said order of sale the said Sheriff on October 31, 1904, duly sold said mining claims to this plaintiff for the sum of Two Thousand Fifty One Dollars, then paid by said Plaintiff to the said Sheriff and thereupon the usual duplicate certificates of sale thereof were by said Sheriff delivered to the plaintiff. That since the commencement of the action at bar the said Sheriff has executed and delivered to this plaintiff a Sheriff's deed conveying under said judgment order of sale and Sheriff sale, the said Mining claims to this plaintiff.

13. That on October 25, 1904, in an action then pending in this court wherein this plaintiff is therein plaintiff, and said company is defendant, the plaintiff duly recovered a judgment against the company for the sum of One Thousand Nine Hundred and forty-six dollars and Fifty five cents, together with costs taxed at
42 Seventy six dollars and Sixty five cents, and foreclosing an attachment lien therein against said mining claims. That on October 26 ,1904, an order of sale was duly issued on said judgment directed to the Sheriff of this county commanding him to sell said mining claims, according to law and thereafter and on November 21, 1904, said sheriff, under said order of sale, duly sold at public sale all of said mining claims to this plaintiff for the sum of Five Hundred Dollars, then paid by plaintiff to said Sheriff, and thereupon the said Sheriff executed and delivered to this plaintiff the usual duplicate certificates of sale evidencing said sale.

14. That on November 29, 1904, an execution, in due form of law, was issued on said judgment of Bennett against E. G. Wager and Tom Taylor, for the sum of Two Thousand Seven Hundred and Three Dollars and twenty five cents, and interest thereon at the rate of one and one half per cent. per month, from December 23, 1899, until paid and costs taxed at Nineteen Dollars and Thirty Five Cents, and directed and delivered to the Sheriff of this county and thereunder on November 29, 1904 said Sheriff levied said execution upon an undivided one half interest in said mining claims, as the property of said E. G. Wager and thereafter under said execution and levy the said Sheriff on December 22, 1904, sold, as required by law, among other properties, the said undivided one half
43 interest in said mining claims to Robt. E. Morrison, defendant for the sum of Twenty Five Hundred Dollars then paid to said Sheriff and thereupon duplicate certificates of sale were issued and delivered by said Sheriff to said Morrison evidencing said sale.

15. That on the — day of ——, 190–, and before the commencement of this action, the judgment recovered by Thos. D. Bennett against E. G. Wager and Tom Taylor in case No. 2611 in this Court, was for value received assigned to defendant Robt. E. Morrison, and from the date of said assignment down to and in-

cluding the time of the filing of the complaint herein and ever since said defendant Robt. E. Morrison has continued to be the assignee of said judgment, and that said defendant Robt. E. Morrison claims an interest in said mining claims under the certificate of sale mentioned in Par. 14 hereof and in no other way. That the Plaintiff claims title and interests in said mining claims under the deeds and certificates of sale mentioned in paragraphs 11, 12, and 13, herein, and in no other way.

Dated at Prescott, Arizona, June 19, 1905.

E. M. SANFORD,
Attorney for Plaintiff.
ROBT. E. MORRISON,
Attorney for Defendants Robt. E. Morrison and Thos. D. Bennett.

(Endorsed:) 3927. Priscilla Bradford *vs.* McDowell, *et al.* Agreed Statement of facts. Filed June 20/05. J. M. Wafts, Clerk.

44 *Bill of Exceptions and Statement of Facts.*

Be it remembered: That in the District Court of Yavapai County, Arizona, in a certain action wherein Priscilla Bradford is Plaintiff, and Thos D. Bennett and Robt. E. Morrison, among others are Defendants, this cause came on regularly for trial at the May Term A. D. 1905, of said Court, and to-wit, on the 20th day of May, 1905, the same being a day of the said Term of Court, before the Court without a jury under the issues joined upon complaint of the Plaintiff, and the Answer of said named Defendant, Robt. E. Morrison, upon the agreed statement of facts theretofore filed, of which the following is a true copy:

"In the District Court of Yavapai County, Arizona.

PRISCILLA BRADFORD, Plaintiff,
vs.
ELMER R. MCDOWELL, ROBT. E. MORRISON, and THOS. BENNETT, Defendants.

Statement of Facts.

The Plaintiff, and Defendants Robt. E. Morrison and Thos. Bennett, in support of the issues on their part joined, stipulate that upon the trial of said cause, said issues may be submitted upon the following facts and the said facts are all the facts in said cause.

1. That at the dates of the making of the respective locations hereinafter described the ground covered thereby was unoccupied public mineral lands of the United States of America, and open to exploration and discovery of minerals.

2. That on June 24, 1893, John W. Morse and Geo. W. Wickler, citizens, discovered mineral in place upon and duly located on that date the Blind Girl lode Mining Claim, situate in Big Bug Mining District, Yavapai County, Arizona, the notice of location whereof was on June 29th, 1893, duly recorded at Page Four Hundred Ninety four, of Book Thirty six, of Mining records in the office of the County Recorder of said County; That on December 18, 1890, D. C. Wood, a citizen, discovered mineral in place upon and duly located the Henry Clay and George Washington Mining Claims in said District, and afterwards and on January 29, 1891, the location notices thereof were duly recorded in the office of the said county recorder as follows: The location notice of the Henry Clay, at Page Three Hundred Sixty five, of Book Thirty one, of said records, and the notice of location of the George Washington at page Three Hundred Sixty six, of Book Thirty one of said records. That said locations are contiguous.

3. That on February 15, 1898, said Geo. J. Wickler conveyed by deed, his interest in said Blind Girl locations, to said D. C.
46 Wood; That on September 12, 1898, the interest of said John F. Morse in said Blind Girl location, became vested in said D. C. Wood, by virtue of proceedings theretofore had for forfeiture of said Morse's interest as co-owner, for want of payment to said Wood as Co-owner, of annual assessment work on said locations in previous years done by the said Wood thereon. That on February 11, 1898, said Wood conveyed by deed, to E. G. Wager, an undivided one-half interest in and to said mining claims which said deed was recorded on April 1, 1898, at page Six Hundred Sixteen of Book Forty two, of deed records of said County Recorder's Office.

4. That said E. G. Wager, on the delivery of said deed by said Wood to said Wager, thenceforward continuously to and until the delivery of conveyance from said wood, Wager and Reese M. Ling to the corporation as hereinafter mentioned, held the paper title to an undivided one fourth interest in said mining claims in trust for the use and benefit of Reese M. Ling.

5. That on December 23, 1899, in a certain action then pending in this Court, wherein Thos. D. Bennett, is plaintiff, and the same E. G. Wager and one Tom Taylor are defendants, said plaintiff recovered a judgment against said defendants for the sum of Two Thousand Seven Hundred Three Dollars and Twenty five cents with interest thereon at the rate of one and one half per cent. per month, until paid, and costs of suit taxed at Nineteen Dollars, and
47 Thirty five Cents, which said judgment was afterwards and on December 30, 1899, duly docketed in the office of the Clerk of this Court.

6. That on December 23rd, 1899, the date as aforesaid, of the said judgment and continuously thereafter, until August 27, 1900, the interests of the actual co-owners in said Mining Claims were, as follows, to-wit: Said D. C. Wood of an undivided one half; the said E. G. Wager of an undivided one fourth; and the said Reese M. Ling of an undivided one fourth.

7. That on August 27, 1900, said D. C. Wood, E. G. Wager, and Reese M. Ling for a valuable consideration, by a deed in the form known as a Mining Deed, sold and conveyed the said mining claims to the McCabe Extension Mining and Milling Company a corporation, having power to take and receive like conveyances and hold interests in mining claims which said deed was contemporaneously, with its execution delivered to said corporation and said deed was thereafter and on February 12, 1901, duly recorded in said recorder's office at page four Hundred Eight of Book Fifty Three of deed records.

8. That contemporaneously with the delivery of said deed, said grantors placed the said corporation in the actual and exclusive possession and occupation of said mines, and said corporation and its assignee, the Plaintiff herein, has thenceforward continuously been and is now in the actual and exclusive possession of said mines and exclusively performing each and every year after the 8 year 1900, to this date annual labor in excess of the amount of One Hundred Dollars per annum upon each of said claims and said corporation has during its said possession of said mining claims expended more than Forty Thousand Dollars in improvements in and on said mine.

9. That the said Wager, Wood and Ling, nor either of them or any one for them or either of them have not since August 27, 1900, been in the possession of any of said mining claims, and they nor any one for them or either of them, have not since that date, done or performed on said mines or either of them any work, labor or improvement constituting annual labor required by the mining laws of Congress to be done on lode claims.

10. That said Mining Claims have never been patented and the fee to the ground covered by the locations thereof is held by the United States of America.

11. That on November 6, 1902, Amy Hill filed a lien in the office of said County Recorder against said Henry Clay Mining Claim for materials furnished said McCabe Extension Mining and Milling Company, (now designated as and hereinafter referred to as the Company), and on April 4, 1903, an action was brought by said Any Hill against said Company to foreclose said lien, in this Court and numbered as action 3609.

That on March 20, 1903, J. M. Farrell filed a lien in said Recorder's Office against said Henry Clay Mining Claim for 9 labor done for and material furnished said Company and afterwards and on April 6, 1903, an action was commenced by said Farrell against said Company, in this Court, to foreclose said lien, and numbered 3612.

That afterwards the said actions 3609 and 3612, were duly consolidated and afterwards and on December 4, 1903, such proceedings were therein had as that said Farrell duly recovered a judgment against said company for One Thousand Sixty Eight Dollars, and costs taxed at Forty two Dollars and Seventy cents, and Amy Hill, duly recovered a Judgment against said Company for One Thou-

sand Two Hundred and Seventeen Dollars and Eighty Three Cents, and costs taxed at Thirty eight Dollars and Eighty five cents, and a decree was then entered foreclosing said liens against said Henry Clay Mining Claim, and directing a sale of said mining claims.

That on March 1, 1904, an norder of sale on the Judgments so rendered in said consolidated actions was duly issued directed to the Sheriff of this county and thereunder on March 26, 1904, the said Henry Clay Mining Claim, was by said Sheriff sold to Thomas C. Job, for the sum of Two Thousand Six Hundred Fifty six Dollars and eighty seven cents, then paid to the said Sheriff and the Sheriff, then issued the duplicate Certificates of sale thereon as required by law, one whereof was duly recorded.

That on September 26, 1904, said Thomas C. Job, for val-
50 uable consideration, to-wit, the principal and interest therein due on the purchase price of said Sheriff's sale then paid to said Job, did sell and assign said certificate of sale to this Plaintiff and thereafter and on October 26, 1904, the said Sheriff duly executed and delivered to this Plaintiff, a sheriff's deed, conveying to her under said judgment, in said consolidated actions, the said order of sale, and the sale aforesaid, thereunder, the said Henry Clay Mining Claim, which said deed was recorded in said Recorder's Office on October 26, 1904, at page Two Hundred Seventy four of Book Sixty Nine of deed records.

12. That on June 25, 1903, in a certain action then pending in this court wherein R. H. Burmister & Sons Company is Plaintiff, and said McCabe Extension Mining and Milling Company is Defendant a Judgment was rendered in favor of said Plaintiff and against the Company for the sum of One Thousand Eighty One Dollars and Twenty one cents, debt and costs taxed at Sixteen Dollars and Fifty five cents, and the attachment lien dating from June 25, 1903, therein was duly foreclosed against all of said Mining Claims;

That on September 30, 1904, an order of sale was issued on said judgment directed to the Sheriff of said County, commanding him to sell said mining claims, and under said order of sale the said Sheriff on October 31, 1904, duly sold said mining claims to this plaintiff for the sum of Two Thousand Fifty one Dollars,
51 then paid by said Plaintiff to the said Sheriff and thereupon the usual duplicate certificates of sale thereof were by said Sheriff delivered to the Plaintiff. That since the commencement of the action at bar the said Sheriff has executed and delivered to this Plaintiff a Sheriff's deed conveying under said judgment order of sale and Sheriff's sale, the said mining claims to this plaintiff.

13. That on October 25, 1904, in an action then pending in this court wherein this Plaintiff is therein Plaintiff, and said Company is defendant, the plaintiff duly recovered a judgment against the company for the sum of One Thousand Nine Hundred and Forty six Dollars and Fifty five cents, together with costs taxed at Seventy six Dollars and sixty five cents, and foreclosing an attachment lien therein against said mining claims. That on October 26, 1904, an

order of sale was duly issued on said Judgment directed to the Sheriff of this county commanding him to sell said mining claims, according to law and thereafter and on November 21, 1904, said Sheriff, under said order of sale, duly sold at public sale all of said mining claims to this plaintiff for the sum of Five Hundred Dollars, then paid by Plaintiff to said Sheriff, and thereupon the said Sheriff executed and delivered to this Plaintiff the usual duplicate certificates of sale evidencing said sale.

14. That on November 29, 1904, an execution, in due form of law, was issued on said judgment of Bennett against E. G. Wager and Tom Taylor, for the sum of Two Thousand seven Hundred
52 and Three Dollars and twenty five cents, and interest thereon at the rate of one and one half per cent. per month, from December 23, 1899, until paid and costs taxed at Nineteen Dollars and Thirty Five Cents, and directed and delivered to the Sheriff of this County and thereunder on November 29, 1904, said Sheriff levied said execution upon an undivided one half interest in said mining claims, as the property of said E. G. Wager and thereafter under said execution and levy the said Sheriff on December 22, 1904, sold as required by law, among other properties, the said undivided one half interest in said mining claims to Robt. E. Morrison, Defendant, for the sum of Twenty Five Hundred Dollars then paid to said Sheriff, and thereupon duplicate certificates of sale were issued and delivered by said Sheriff to said Morrison evidencing said sale.

15. That on the — day of ——, 190–, and before the commencement of this action, the judgment recovered by Thos. D. Bennett against E. G. Wager and Tom Taylor in case No. 2611 in this court, was for value received assigned to Defendant Robt. E. Morrison, and from the date of said assignment down to and including the time of the filing of the Complaint herein and ever since said Defendant Robt. E. Morrison has continued to be the assignee of said Judgment, and that said Defendant Robt. E. Morrison claims an interest in said Mining Claims under the certificate of sale mentioned in Par. 14 hereof and in no other way. That the Plaintiff claims title
53 and interest in said mining claims under the deeds and certificates of sale mentioned in Paragraph- 11, 12, and 13, herein, and in no other way.

Dated at Prescott, Arizona, June 19, 1905.

E. M. SANFORD,
Attorney for Plaintiff.
ROBT. E. MORRISON,
Attorney for Defendants Robt. E. Morrison and Thos. D. Bennett.

Endorsed: Filed June 20, 1905.

The said agreed statement of facts was read in evidence to the Court, and the same was all the evidence offered or read upon the trial of said cause by either party to said action.

Thereupon the Plaintiff requested the Court to find as Conclusions of Law, that the docketing of the judgment mentioned in paragraph 5 of the agreed Statement of Facts, did not create a lien upon the

mining claims in question; further, that the levy of the execution mentioned in Paragraph 14 of the agreed Statement of Facts did not create a lien upon said mining claims relating back to the docketing of said judgment, and further, that the Plaintiff is the owner of the whole of said mining claims, which said request of the Plaintiff was denied by the Court, to which ruling of the Court the Plaintiff then and there excepted.

Thereupon the Court took said cause under advisement and afterwards, and on the 30th day of September, 1905, the same
54 being a day of the said June Term of Court, the Court filed its Findings of Fact and Conclusions of Law as follows:—to-wit:—

Venue and Title Omitted.

Findings of Fact and Conclusions of Law.

This cause came on for trial on the 20th day of June, 1905, before the Court sitting without a jury, a jury having been expressly waived, upon the complaint and amended answer of defendant, Robt. E. Morrison, E. M. Sanford, appearing for Plaintiff, and Robt. E. Morrison, appearing for Defendant, R. E. Morrison and thereupon said cause was submitted to the Court for decision upon an agreed statement of facts dated June 19, 1905, and duly filed on the 20th day of June, 1905, and the Court having fully considered the cause, files the following Findings of Fact and Conclusions of Law:—

Findings of Fact.

I.

That at the dates of the making of the respective locations hereinafter described the ground covered thereby was unoccupied public mineral lands of the United States of America, and then open to exploration and discovery of minerals.

II.

That on June 24, 1893, John W. Morse and Geo. W.
55 Wickler citizens, discovered mineral in place upon, and duly located on that date the Blind Girl Lode Mining Claim, situate in Big Bug Mining District, Yavapai County, Arizona, notice of location whereof was on June 29, 1903, duly recorded at page 494 of Book 36, of Mining Records in the office of the County Recorder of said Yavapai County; that on December 18, 1890, D. C. Wood, a citizen, discovered mineral in place upon and duly located the Henry Clay and George Washington Mining claims in said District, and afterwards and on January 29, 1891, the location notice- thereof were duly recorded in the office of said County Recorder as follows: The location notice of the Henry Clay, at page 365, of Book 31 of said records, and the notice of location of the George Washington at page 366, of Book 31, of said records; that said locations are contiguous.

III.

That on February 15, 1898, said Geo. W. Wickler conveyed by deed, his interest in said Blind Girl location, to said D. C. Wood; that on September 12, 1898, the interest of said John W. Morse in said Blind Girl location, became vested in said D. C. Wood, by virtue of proceedings theretofore had for forfeiture of said Morse's interest as co-owner, for want of payment of said Wood as co-owner, of annual assessment work on said location in previous years done by the said Wood thereon. That on February 11, 1898, said
56 Wood conveyed by deed to E. G. Wager an undivided, one-half interest in and to said mining claims which said deed was recorded on April 1, 1898, at Page 616 of Book 42 of Deed Records of said County recorder's office.

IV.

That said E. G. Wager on the delivery of said deed by said Wood to said Wager thenceforward continuously to and until the delivery of conveyance from said Wood, Wager, and Reese M. Ling to the corporation as hereinafter mentioned, held the paper title to an undivided one fourth interest in said mining claims in trust for the use and benefit of Reese M. Ling.

V.

That on December 23, 1899, in a certain action then pending in this Court, wherein Thos. D. Bennett is plaintiff and the same E. G. Wager and one Tom Taylor are defendants, said Plaintiff recovered a judgment against said defendants for the sum of $2703.25 with interest thereon at the rate of one and one half per cent. per month, until paid, and costs of suit taxed at $19.35, which said judgment was afterwards and on December 30, 1899, duly docketed in the office of the Clerk of this Court.

VI.

That on December 23, 1899, the date as aforesaid, of the said judgment and continuously thereafter, until August 27, 1900
57 the interests of the actual co-owners in said mining claims were as follows, to-wit: said D. C. Wood, of an undivided one-half; the said E. G. Wager of an undivided one-fourth, and said Reese M. Ling of an undivided one-fourth.

VII.

That on August 27, 1900, said D. C. Wood, E. G. Wager, Reese M. Ling for a valuable consideration, by a deed in the form known as a Mining Deed, sold and conveyed the said mining claims to the McCabe Extension Mining and Milling Company, a corporation, having power to take and receive like conveyances and hold interest in mining claims, which said deed was contemporaneously with its execution delivered to said corporation and said deed was thereafter and on February 12, 1901, duly recorded in said Recorder's office at page 408 of Book 53 of Deed Records.

VIII.

That contemporaneously with the delivery of said deed, said grantors placed the said corporation in the actual and exclusive possession and occupation of said mines, and said corporation and its assignee, the plaintiff herein, has thenceforward continuously been and is now in the actual and exclusive possession of said Mines, and exclusively performing each and every year after the year 1900, to this date, annual labor in excess of the amount of One Hundred Dollars per annum upon each of said claims, and said corpora-
58 tion has during its said possession of said mining claims expended more than Forty Thousand Dollars in improvements in and on said mines.

IX.

That the said Wager, Wood, and Ling, nor either of them nor any one for them or either of them have not since August 27, 1900, been in the possession of any of said Mining Claims, and they nor any one for them or either of them, have not since that date, done or performed on said mines or either of them any work, labor, or improvement constituting annual labor required by the mining laws of Congress to be done on lode claims.

X.

That said mining claims have never been patented and the fee to the ground covered by the locations thereof is held by the United States of America.

XI.

That on November 6, 1902, Amy Hill filed a lien in the office of said County Recorder against said Henry Clay mining claim for materials furnished said McCabe Extension Mining and Milling Company, (now designated as and hereinafter referred to as the Company), and on April 4, 1903, an action was brought by said Amy Hill against said company to foreclose said lien, in this Court, and numbered as action 3609.

That on March 20, 1903, J. H. Farrell filed a lien in
59 said Recorder's office against said Henry Clay Mining claim for labor done for and material furnished said Company, and afterwards and on April 6, 1903, an action was commenced by said Farrell against said Company, in this Court to foreclose said lien, and numbered 3612.

That afterwards the said actions 3609 and 3612, were duly consolidated and afterwards and on December 4, 1903, such proceedings were therein had as that said Farrell duly recovered a judgment against said company for $1068.00 and costs taxed at $42.70, and Amy Hill duly recovered a judgment against said Company for $1217.83, and costs taxed at $38.85, and a decree was then entered foreclosing said liens against said Henry Clay Mining Claim, and directing a sale of said mining claim.

That on March 1, 1904, an order of sale on the judgments so rendered in said consolidated actions was duly issued directed to the

Sheriff of this County and thereunder on March 26, 1904, the said Henry Clay mining claim, was by said Sheriff sold to Thomas C. Job, for the sum of $2656.87, then paid to said Sheriff, and the Sheriff then issued duplicate certificate- of sale thereon as required by law, one whereof was duly recorded.

That on September 26, 1904, said Thomas C. Job, for valuable consideration, to-wit: the principal and interest therein due on the purchase price at said Sheriff's sale then paid to said Job,
60 did sell and assign said certificate of sale to this plaintiff, and thereafter and on October 26, 1904, the said Sheriff duly executed and delivered to this Plaintiff a sheriff's deed, conveying to her under said judgment, in said consolidated actions, the said order of sale, and the sale aforesaid, thereunder the said Henry Clay mining claim, which said deed was recorded in said Recorder's office on October 26, 1904, at page 274, of Book 69 of Deed Records.

XII.

That on June 25, 1903, in a certain action then pending in this Court, wherein R. H. Burmister & Sons Company is Plaintiff, and said McCabe Extension Mining and Milling Company is defendant a judgment was rendered in favor of said Plaintiff and against the company for the sum of $1081.21, debt, and costs taxed at $16.55, and the attachment lien dating from June 25, 1903, therein was duly foreclosed against all of said mining claims.

That on September 30, 1904, an order of sale was issued on said judgment directed to the Sheriff of said County, commanding him to sell said mining claims, and under said order of sale the said Sheriff on October 31, 1904, duly sold said mining claims to this plaintiff for the sum of $2051.00 then paid by said Plaintiff to the said Sheriff and thereupon the usual duplicate certificates of sale thereof were by said Sheriff delivered to the Plaintiff. That
61 since the commencement of the action at bar the said Sheriff has executed and delivered to this Plaintiff, a Sheriff's deed conveying under said judgment, order of sale and Sheriff's sale, the said mining claims to this plaintiff.

XIII.

That on October 25, 1904, in an action then pending in this court wherein this Plaintiff is therein plaintiff, and said company is defendant, the plaintiff duly recovered a judgment against the company for the sum of $1946.55, together with costs taxed at $76.65, and foreclosing an attachment lien therein against said mining claims. That on October 26, 1904, an order of sale was duly issued on said judgment directed to the Sheriff of this county commanding him to sell said mining claims, according to law and thereafter and on November 21, 1904, said Sheriff, under said order of sale, duly sold at public sale all of said mining claims to this Plaintiff for the sum of $500.00, then paid by plaintiff to said Sheriff, and thereupon the said Sheriff executed and delivered to this plaintiff the usual duplicate certificates of sale evidencing said sale.

XIV.

That on November 29, 1904, an execution in due form of law was issued on said Judgment of Bennett against E. G. Wager and Tom Taylor, for the sum of $2703.25, and interest thereon at the rate of 1 and ½% per month, from December 23, 1889, until
62 paid and costs taxed at $19.35, and directed and delivered to the Sheriff of this county and thereunder on November 29, 1904, said Sheriff levied said execution upon an undivided one-half interest in said mining claims as the property of said E. G. Wager, and thereafter under said execution and levy the said Sheriff on December 22, 1904, sold, as required by law, among other properties, the said undivided one-half interest in said mining claims to Robt. E. Morrison, defendant, for the sum of $2500.00 then paid to said Sheriff, and thereupon duplicate certificates of sale were issued and delivered by said Sheriff to said Morrison, evidencing said sale.

XV.

That on the — day of ——, 190-, and before the commencement of this action, the judgment recovered by Thos. D. Bennett against E. G. Wager and Tom Taylor in case No. 2611 in this Court, was for value received assigned to defendant Robt. E. Morrison, and from the date of said assignment down to and including the time of the filing of the complaint herein and ever since said defendant Robt. E. Morrison has continued to be the assignee of said judgment, and that said defendant Robt. E. Morrison claims an interest in said mining claims under the certificate of sale mentioned in Par. 14 hereof and in no other way. That the plaintiff claims title and interests in said mining claims under the deeds and certificates of sale
63 mentioned in Paragraphs 11, 12, and 13, herein and in no other way.

From the foregoing Findings of Fact the Court finds as Conclusions of Law.

1. That the Plaintiff is the owner of an undivided three fourths estate of the mining claims mentioned in the Complaint, and is entitled to a judgment establishing her title in such estate as against all the Defendants.

2. That upon the docketing in the office of the Clerk of said Court on December 30, 1899, in Judgment Docket No. 2, at page 149, of the judgment rendered on the 23d day of December, 1899, in said case No. 2611 wherein Thos. D. Bennett was plaintiff, and Tom Taylor and E. G. Wager were defendants, the said Judgment became a judgment lien upon an undivided one-fourth interest in and to the unpatented mining claims described in Plaintiff's complaint, to-wit: the Blind Girl Lode Mining Claim, Henry Clay Mining Claim, George Washington Mining Claim, and that the lien continued from the date of said docketing to be a judgment lien upon said interest in said property and was such lien at the time of the filing of the complaint herein; and that such lien so continued at the time of the issuance of the execution on November 29, 1904, which said execution was issued on said judgment of Thos. D. Bennett against E. G.

Wager and Tom Taylor, and that upon the Sheriff's sale of
64 the property hereinbefore described, and specially mentioned in Plaintiff's Complaint herein, under said execution, the purchaser at said sale, Robt. E. Morrison one of the defendants herein, was substituted to and acquired all the right, title, interest, and claim of the judgment debtors in and to said mining claims, and by reason thereof became the owner of an undivided one-fourth interest in and to said mining claims, subject to redemption as provided by law, and the said Robt. E. Morrison is entitled to a judgment establishing his title in and to a one-fourth estate in said mining claims as against the Plaintiff and his co-defendants, and that he recover his costs herein.

Let a decree be entered accordingly.

Dated in open court September 30, 1905.

RICHARD E. SLOAN, *Judge.*

Endorsed: Filed September 30, 1905.

To the Conclusions of Law stated in Paragraph 1, the Plaintiff then and there excepted for the reason that the Court should have found that the entire estate in said mines was in the Plaintiff.

To the Findings of the Conclusions of Law stated in Paragraph 2 thereof, the Plaintiff then and there excepted for the reason that
65 the docketing of the judgment referred to did not create a lien upon the estate of the debtor, E. G. Wager in said mining claims, and further, because unpatented mining claims are not the subject of a judgment lien under the laws of this Territory.

Thereafter, and on October 2, 1905, the Plaintiff filed in said cause a Motion for a new trial of which the following is a copy, to-wit:

Venue and Title Omitted.

Comes now the Plaintiff and moves for a new trial of the issues joined between the Plaintiff, and the Defendants Thomas D. Bennett, and R. E. Morrison upon the following grounds, to-wit:

First. The Court erred in construing the term "real property" in section 4 of Act 50 of the Laws of 1891, to include the estate held by an owner in an unpatented mining claim.

Second. The Court erred in holding, that under the Statutes of this Territory, that a judgment docketed under its laws in the office of the Clerk of the Court became a lien upon the estate of an owner in an unpatented mining claim.

Third. The Court erred in holding that the levy of the execution of November 29th, 1904, related back to the date of docketing the Judgment herein.

Fourth. The Court erred, that the specific lien of the levy of execution of November 29th, 1904, vested an estate in the defendants' Bennett and Morrison as against the estate of this Plaintiff in said property.

Fifth. The Court erred in its conclusions of law in favor of said Defendant and against this Plaintiff.

Sixth. The Court erred in holding that under the laws of this Territory the docketing of a judgment created a lien upon the estate of an owner of an unpatented mining claim.

Seventh. The Court erred in holding that the estate and interest of an owner in an unpatented mining claim is the subject of a judgment lien in this Territory.

Eighth. The Court erred in rendering Judgment in favor of Defendants Bennett and Morrison and against the Plaintiff.

E. M. SANFORD,
Attorney for Plaintiff.

That afterwards, and on the 23d day of October, 1905, the same being a day of the said May term of Court, said Motion for new trial came regularly on for hearing, and being argued by attorneys for respective parties, the Court after hearing the arguments denied said motion for a new trial, to which ruling of the Court in denying said motion, the Plaintiff then and there accepted.

67 Wherefore, Plaintiff prays that this, her bill of Exceptions in that behalf may be settled, signed and sealed, and made a part of the records in this case, which is accordingly done this 3rd day of November 1905, at the June term A. D. 1905.

RICHARD E. SLOAN, *Judge.*

(Endorsed:) Priscilla Bradford, Plaintiff *vs.* Elmer R. McDowell, Robt. E. Morrison and Thos. Bennett, Defendants. Bill of exceptions and statement of facts. Filed Nov. 3, 1905, J. M. Watts, Clerk.

68 TERRITORY OF ARIZONA, *County of Yavapai, ss:*

I, J. M. Watts, as Clerk of the District Court of Yavapai County, Arizona, do hereby certify that the annexed papers constitute the transcript of all the minute entries, judgment and decrees of said Court, together with the original of all the files of the case of Priscilla Bradford, Plaintiff against R. E. Morrison and others, lately pending in said Court.

Witness, my official hand and the seal of said Court this 5 day of January, 1906.

[SEAL.] J. M. WATTS, *Clerk.*

69 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

PRISCILLA BRADFORD, Plaintiff,
vs.
ELMER R. McDOWELL, ROBT. E. MORRISON, and THOS. D. BENNETT, Defendants.

Appeal Bond.

Whereas, Priscilla Bradford, the Plaintiff in the above entitled action, has appealed to the Supreme Court of the Territory of Arizona, from a Judgment rendered and entered against her in the said action, in favor of Defendant Robt. E. Morrison and against the Plaintiff on the 30th day of September, 1905, quieting title to an undivided one fourth interest of the mining claims therein described and ———— Dollars costs of suit.

Now, therefore, in consideration of the premises, and of such appeal, we, the undersigned Priscilla Bradford as principal, and Robt. H. Burmister and Homer R. Woods of the said County of Yavapai, as Sureties, do hereby undertake and promise on the part of the said Appellant, that the said Appellant shall prosecute her appeal with effect and shall pay all costs which have accrued in the Court below, or which may accrue in the Appellate Court, not exceeding Six Hun-

70 dred Dollars, to which said amount we acknowledge ourselves jointly and severally bound unto the said Robt. E. Morrison, his heirs personal representatives and assigns.

And, whereas, the Appellant is desirous of staying the execution of the said judgment so appealed from, in so far as it related to the quieting of the title to an undivided one fourth of the mining claims in said judgment described, we do further, in consideration thereof, and of the premises jointly and severally undertake and promise, and do acknowledge overselves further jointly and severally, unto the said Robt. E. Morrison, his heirs personal representatives and assigns, in the further sum of One Thousand Dollars (Being the amount for that purpose fixed by the said District Court,) that the said Judgment quieting title in said Robt. E. Morrison to an undivided one fourth of said mining claims, shall be stayed and abide the decision of the said Supreme Court and the mandate thereof in the said appeal, and that the Appellant will pay to the said Robt. E. Morrison all damages which he may sustain by the said judgment, being stayed and abiding the decision of the Supreme Court and the mandate thereof, on the said appeal, not exceeding the sum of One Thousand Dollars, so as aforesaid fixed by the Judge of said Court, by which the said Judgment was rendered.

Witness our hands this 21st day of December, 1905.

R. H. BURMISTER.
H. R. WOOD.
PRISCILLA BRADFORD.
W. W. LINCOLN.
R. VILVEN.

71 TERRITORY OF ARIZONA, *County of Yavapai, ss:*

Robt. H. Burmister and Homer R. Wood, being severally sworn each for himself and not one for the other says: I am a resident and house holder of said County, and that I am worth the sum of Sixteen hundred Dollars over and above my just debts and liabilities exclusive of property exempt from execution.

R. H. BURMISTER.
HOMER R. WOOD.

Subscribed and sworn to before me this 27th day of December, 1905.

[SEAL.] J. M. WATTS,
Clerk Dist. Court.

STATE OF CALIFORNIA, *County of Riverside, ss:*

On this 21st day of December in the year one thousand nine hundred and five A. D. before me, Daniel Lord, a Notary Public, in and for said County of Riverside, personally appeared Priscilla Bradford known to me to be the same person whose name is subscribed to the within instrument and she duly acknowledged to me that she executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the County of Riverside, the day
72 and year in this Certificate first above written.

DANIEL LORD,
[SEAL.] *Notary Public in and for Riverside County, State of California.*

My Commission expires Dec. 29, 1906.

Approved as to the Supersedeas Bond this 27th day of December A. D., 1905.

RICHARD E. SLOAN, *Judge.*

Approved as to the Cost Bond on Appeal this 27th day of December, 1905.

J. M. WATTS, *Clerk.*

Endorsed: Filed Dec. 27, 1905, at 10 o'clock A. M. J. M. Watts, Clerk.

TERRITORY OF ARIZONA, *County of Yavapai, ss:*

I, J. M. Watts, as Clerk of the District Court of Yavapai County Arizona, do hereby certify that I have compared the foregoing with the original Appeal Bond in the therein entitled cause and the same is a full, true and complete copy of the original and of the whole thereof, as the same appears on file and of record in my said office.

Witness, my official hand and the Seal of said Court, this 5th day of January, 1906.

[SEAL.] J. M. WATTS, *Clerk.*

(Endorsed:) No. 959. In the Supreme Court of the Territory of Arizona. Priscilla Bradford *vs.* Robert E. Morrison. Original papers. Filed Jan. 8, 1906. S. M. Cullon, Clerk.

73 In the Supreme Court of Arizona.

PRESCILLA BRADFORD, Appellant,
vs.
ROB'T E. MORRISON, Appellee.

Appealed from Yavapai.

Stipulation.

It is stipulated that the above cause may be and is submitted to the Court on the Record and Briefs filed.
Dated, Prescott, Arizona, January 18, 1906.

E. M. SANFORD,
Attorney for Appellant.
ROBT. E. MORRISON,
In Pro. Per. Appellee.

(Endorsed:) No. 959. In the Supreme Court of Arizona. Priscilla Bradford, Appellant *vs.* Robt. E. Morrison, Appellee. Stipulation. Filed Jan. 19, 1906, S. M. Cullom, Clerk.

74 In the Supreme Court of the Territory of Arizona.

No. 959.

PRISCILLA BRADFORD, Appellant,
vs.
ROBERT E. MORRISON, Appellee.

Opinion.

Appeal from District Court, Yavapai County; Justice Sloan.

E. M. Sanford, Esq., for appellant.
Robert E. Morrison, Esq., for appellee.

Opinion by CAMPBELL, *J.*:

This action was brought by Priscilla Bradford as plaintiff to quiet title to certain unpatented mining claims. Robert E. Morrison, defendant, set up a judgment lien upon these claims. From a judgment sustaining the validity of this lien plaintiff has appealed. The sole question presented is whether the lien of a general judgment attaches to an unpatented mining claim. At the time the judgment was rendered and docketed Act No. 50 of the 16th Legis-

lative Assembly, approved March 17, 1891, was in force. Section 4 of that Act is as follows:

Every such judgment, when so docketed shall, for a period of five years from the date of the rendition thereof, be a lien on the real property in the county where the same is docketed, except the homestead of every person against whom such judgment shall be rendered and docketed and which he may have at any time thereafter within said period of five years.

75 The general nature of the property which the locator or owner of an unpatented mining claim has therein has been the subject of discussion in the courts in numerous cases, but a review of these cases does not seem necessary here. That it is such an estate as may be inherited is beyond controversy.

Section 2322, R. S. U. S.
Forbes *v.* Gracey, 94 U. S. 762.
Belk *v.* Meagher, 104 U. S. 279.
Manuel *v.* Wulff, 152 U. S. 505.
Elder *v.* Horseshoe Mining & Milling Co., 194 U. S. 248.

The legislature, at the time of employing the words "real property" in the statute under consideration, had defined the meaning to be given the term in the construction of statutes as "co-extensive with lands, tenements and hereditaments," by a statute still in force when the judgment in question was docketed, though repealed since then. Par. 2932, Rev. Stat. 1887. This legislative construction would seem to be conclusive of the question.

Moreover, we have no doubt that, independently of the statute, the estate which the owner of an unpatented mining claim has therein must be held to be real property. In this and other jurisdictions it has for years been so treated.

Jordan *v.* Duke, 6 Ariz. 55; 53 Pac. 197.
Kinney *v.* Fleming, 6 Ariz. 263; 56 Pac. 723.
Costello *v.* Graham, 80 Pac. 336.
Keeler *v.* Trueman, 15 Col. 143; 25 Pac. 311.
Glacier Mountain Silver Mining Co. *v.* Willis, 127 U. S. 471.

76 Indeed, the action brought by the plaintiff herself to quiet her title is brought under the provisions of the statute authorizing actions to quiet title to real property, and can only be maintained under the statute upon the theory that such interest in the mining claims is real property.

The judgment of the lower court is affirmed.

JOHN H. CAMPBELL, *A. J.*

We concur:

EDWARD KENT, *C. J.*
FLETCHER M. DOAN, *A. J.*
FREDERICK S. NAVE, *A. J.*

(Endorsed:) No. 959. In the Supreme Court of the Territory of Arizona. Bradford *vs.* Morrison. Opinion by Campbell, A. J. Recorded in Book — page —. Filed May 12, 1906. S. M. Cullom, Clerk.

In the Supreme Court of the Territory of Arizona.

PRISCILLA BRADFORD, Appellant,
vs.
ROBERT E. MORRISON, Appellee.

Motion for Rehearing.

Comes now the Appellant and moves the Court for a re-hearing this case for the reasons:

First. The Appellant has never contended that an unpatented ning claim is not inheritable, but for comparative construction statutes the question is important as to the character of the estate it descends.

Second. That Par. R. S. 1887, does not apply to the term real perty as used in the judgment lien statute.

Third. That the statute under which this action is brought does estop the appellant from asserting that an easement may be the ject of such action.

As to the first ground neither the 94th, 104th, 152nd, or 194th S. Cases define the character of the estate that descends. Our tute of "Descents and Distribution" was evidently written by an able lawyer. Pars. 2116 and 2117 R. S. 1901, reads:

"When any person having *title to any estate of* inheritance real, personal or mixed, shall die intestate as to such estate."

ere is embodies all estates that may be inherited. The language "title to an estate of inheritance." Without the aid of Section 2 R. S. U. S. the title to the estate of the owner of an unented mining claim was *not inheritable,* but being inheritable der that statute we must look to the common law for the pure of determining the character and degree of the estate that cends. An estate may be in fee simple, for a year or term of s, an easement, or any estate less than a fee. A leasehlod es- and any estate less than a freehold is personal property at com- law, and descends as personal property, yet this court draws nference that the easement estate is subject to all the rules and rines involved in a fee estate when it becomes the subject of de- ts. In descents personal property has different liabilities than of fee simple titles. It may pass to the executor and be sold for debts. It depends upon different principal-s of administra- It is not the subject of redemption. We assert that the rt has lost track of the common law rule that easements of this acter are personal property. It is true that Par. 733 R. S. , provides that "The term "Lands" as used in this title is de- d to mean and includes mines and mining claims." But a care- ful consideration of the intents and purposes of this language shows that it was not prepared by an able lawyer. Its pur- pose was to change transfers of title from parol to written uments. What it means is:

That the titles to easement estates in unpatented mines shall be transferred by conveyances in the form of transferring titles in fee simple. Neither the statute nor the version here given can possibly change the character of the degree of estate, or change it from personal to real property. To illustrate:

The legislature has a right to say that the title to a horse shall be transferred in the same form as conveyances of fee simple titles, but that would not make the horse "land" nor does it bar the remedy of replevin, conversion or similar remedies pertaining to personal property; nor does it make a horse descend under the law of inheritance as fee simple titles; or, as lands descend. True a horse is a different form of property than leasehold estate, or an easement estate, but notwithstanding that, they all remain personal property as contradistinguished from real property when remedial rights are sought, or the doctrine of descents is enforced.

The same construction which this Court applies to the term "real property"—the very same argument, because the Legislature had provided that the titles to horses shall be passed in the form of real estate conveyances, would make a judgment, under the
80 phrase "real property" a lien on the horse—the subject of inheritance as fee simple titles and of actions to quiet titles; it would abolish the action of replevin and trover as to horses.

We feel certain that this Court does not wish to be understood as adopting such a rule. Then if the appellant's application of the laws of interpretation is good as to the horse statute, why not go further and apply the same rule to the judgment lien statute, a rule, that whenever the subject has been carefully investigated is backed by the weight of the authority of the states and sustained by the decisions of the United States Supreme Court. That is, because Courts at Common Law had no jurisdiction over estates less than a fee simple. Judgment lien statutes must be specific to apply to such lesser estates. That the general legislative definition that Real Property in those statutes shall include "lands and tenements" when by the very course of jurisdiction interpretation, construction and application of authoritative precedents such definition can no more apply to such a statute than such a horse statute would confer a judgment lien against it under the term real property.

I have carefully examined the case of Keller *vs.* Truman 15 Col. 143. At first reading it would seem to sustain the decision of this court, but when one comes to analy*size* the opinion, it does not, like the opinion in the case at bar seem to have been fully con-
81 sidered and applied to the relations which easement estates bear to remedies or to the character of the estate inherited. It is like the decisions cited by counsel for appellee in the original brief. They are all made without apparent close examination into the rules of elementary principles and seem to have been guided by the glamour of a few statutory phrazes similar to those above quoted.

As to the third ground the Court holds that because the plaintiff has brought a statutory action to quiet title she cannot be heard to say that she does not hold the fee simple title, but only a mere easement. Such a holding directly con*ter*venes the spirit of Ely *vs.*

M. & A. R. Co. 129 U. S. 291 wherein any character of estate in
l property, or any interest whether it be an easement, leasehold,
rtgage, trust, or other like, estates may be ascertained and deter-
ned. The remedy applies to the quieting of titles to any char-
er of estate in real property. Jordan *vs.* Duke 6 Ariz. 55 does not
into the character of the estate to be quieted but if any thing, it
holds the views contended for here. The same may be said of
nney *vs.* Fleming 6 Ariz. 263; and of the Glacier case 127 U. S.

The statutory action to quiet title was created for the express pur-
e of determining just such cases as the one at bar. The Plaintiff
contends that her easement estate in this property is not the
subject of a judgment lien because those words as used in the
judgment lien must be construed according to the practice of
mon law Courts and in this particular instance are not within
statutory definition of lands, tenements, hereditaments. There-
, when appellee took his title it became a cloud upon the Plain-
's estate and she had the right to enforce the statutory remedy
n action to quiet title to clear her limited estate of this cloud.
n the very use of the words real property in the statute giving
remedy there are involved the various estates that accompany
ownership of interests in lands and gives to the litigant the right
ave any particular interest in lands determined.
rimarily land signifies any land forming part of the earth's sub-
ces, but when used in a deed it includes the naked earth and
ything with it including the tenements and fixtures. There are
s in which lands and ground are distinguished. In certain other
s, as in taxation, it may include all buildings put on by the
ers or others. Under certain conditions it may even include
es for life when it applies to titles.
n general it is confined to corporal property, and in some cases
term may be so used as to apply to estates equitable as well as
legal. When speaking of titles it may be applied to lease-
hold estates, but that does not mean that in a proper case the
term real property shall be applied to personal estates when
very logic and rule of precedents leads up to a positive interpre-
n that in such a case the term applies only to free hold estates
n this case. We may seem very emphatic in our language, we
be very positive in our statements, but having given this matter
ths and years of consideration we feel that it is possible that
g to the general character of the legal principles involved in
ssues of law here that by an oral argument it is possible that we
be able to aid the Court in coming to what we deem a proper
ion of the legal principles applicable to the facts in this case.

espectfully submitted,

E. M. SANFORD,
Attorney for Appellant.

Endorsed:) No. 959. In the Supreme Court of the Territory of
ona. Priscilla Bradford, Appellant *vs.* Robert E. Morrison, Ap-
e. Motion for Re-hearing. Copy received May 21, 1906.
. E. Morrison, Att'y for Appellee. Filed May 22, 1906. S. M.
m, Clerk.

84 In the Supreme Court of the Territory of Arizona.

PRISCILLA BRADFORD, Plaintiff and Appellant,
vs.
R. E. MORRISON, Defendant and Appellee.

Motion for Allowance of Appeal, etc.

Comes now the plaintiff and appellant herein and moves the Court for allowance of appeal to the Supreme Court of the United States from the judgment heretobefore rendered by this Court in said action, and from the order denying the motion for a rehearing herein, for the reason that the amount in controversy herein is of the value of more than Five Thousand Dollars, as shown by affidavits herewith submitted.

That contemporaneously with the allowance of said appeal, this Court make and file its Findings of Fact herein for and upon such appeal.

That likewise the Court herein fix the amount of the cost bond on the appeal herein.

That likewise an order be made for a citation to be issued to the Appellee herein for and upon such appeal.

E. M. SANFORD,
Attorney for Priscilla Bradford, Plaintiff and Appellant.

85 In the Supreme Court of the Territory of Arizona.

PRISCILLA BRADFORD, Plaintiff and Appellant,
vs.
R. E. MORRISON, Defendant and Appellee.

Notice of Motion.

To the above named Defendant and Appellee:

Please take notice that the plaintiff and appellant in the above entitled action will on Wednesday the 16th day of January, 1907, at the hour of ten o'clock A. M. or as soon thereafter as counsel can be heard, at the Court room of said Court, in the Court House, at the City of Phœnix, County of Maricopa, Territory of Arizona, bring the annexed motion for hearing before said Court. That said motion will be based upon the affidavits, copies of which are hereto annexed; upon findings of fact to be submitted at the time of the hearing of said motion; upon the records and files in said cause, and upon such other affidavits as the appellant may, at the time of said motion, submit, corroborative in their nature of the affidavits, copies of which are herewith submitted.

Dated Prescott, Arizona, January 10th, 1907.

E. M. SANFORD,
Attorney for Priscilla Bradford,
Plaintiff and Appellant.

In the Supreme Court of the Territory of Arizona.

PRISCILLA BRADFORD, Plaintiff and Appellant,
vs.
R. E. MORRISON, Defendant and Appellee.

Affidavit on Appeal.

ERRITORY OF ARIZONA, *County of Yavapai, ss:*

Thomas E. Childers, of lawful age, being first duly sworn, says, reside at McCabe, Yavapai County, Arizona. Have resided at at place for seven years. I am a miner by occupation. I have en a miner for the past eighteen years. I am personally acainted with the Henry Clay, George Washington and Blind Girl ning Claims, in Big Bug Mining District in this county, owned Priscilla Bradford, the above plaintiff. I did the assessment work those mines for the years 1905 and 1906. I live on or near the st end line of the Blind Girl, and within 75 feet of the north side e of the Henry Clay Mining Claim. The north side lines of the nry Clay and George Washington mining claims joined the south e line of the Blind Girl mining Claim, and all three of those min- claims are contiguous. I was foreman of the Gladstone Mine, situate about 1500 feet westerly from the Henry Clay Mining claim, about four years ago. The Gladstone is known as one of the deep working mines in the vicinity of McCabe, in t District. I have worked in the McCabe Mine off and on during last seven years. The McCabe Mine is known as a deep working ne and its easterly end line joins the westerly end line of the nry Clay Mining Claim. The George Washington, Henry Clay l the McCabe main veins are one and the same. I am acquainted h and know the value of the Henry Clay, George Washington l Blind Girl Mining Claims in November 1904, and now. The ue of these claims was in November 1904 and is now at least enty Five Thousand Dollars.
nd further affiant saith not.

THOMAS E. CHILDERS.

ubscribed and sworn to before me this 24th day of December, 6.
ly commission expires September 28, 1908.
[SEAL.]

EARL A. SANFORD,
Notary Public.

88 In the Supreme Court of the Territory of Arizona.

PRISCILLA BRADFORD, Plaintiff and Appellant,
vs.
R. E. MORRISON, Defendant and Appellee.

Affidavit on Appeal.

TERRITORY OF ARIZONA, *County of Yavapai, ss:*

George Wager, of lawful age, being duly sworn says: I have lived in Yavapai County for about twenty four years, and at McCabe in Big Bug Mining District in that county for the past five years. I am a miner by occupation, and have followed mining the past twenty five years. I own interests in mining claims in the vicinity of McCabe. I am acquainted with the Henry Clay, George Washington and Blind Girl mining claims, claimed by plaintiff in the above entitled action, and am familiar with the district generally. The McCabe Mine joins the Henry Clay on the westerly end line of the latter claim (properly speaking, the southwesterly end line) and the Gladstone Mine is immediately southwesterly from the McCabe Mine. The McCabe and Gladstone Mines are known as the deep working mines of the immediate vicinity of McCabe village. The Gladstone and McCabe veins apparently run
89 through the Henry Clay and George Washington. The main shaft of the McCabe Mine is a trifle over 1500 feet from the southwesterly end line of the Henry Clay. I have worked in the McCabe Mine and know that levels run in the northeasterly direction for 800 feet are producing pay ore. The surface indications on the Bradford properties and their adjacency to producing mines on either ends give great value to the property. I am acquainted with the value of the mining claims sometimes known as the McCabe Extension property which is the same as the Henry Clay, George Washington, and Blind Girl mining claims. In my opinion these properties were worth in November 1904, and at the present time not less than twenty five thousand dollars.

And further affiant saith not.

GEORGE WAGER.

Subscribed and sworn to before me this 26th day of December, 1906.

My Commission expires March 25, 1908.

[SEAL.] EDWIN G. WAGER,
Notary Public.

90 In the Supreme Court of the Territory of Arizona.

PRISCILLA BRADFORD, Plaintiff and Appellant,
vs.
R. E. MORRISON, Defendant and Appellee.

Affidavit on Appeal.

TERRITORY OF ARIZONA, *County of Yavapai, ss:*

Alden C. Massey, of lawful age, being by me first duly sworn, says: I am a resident of Big Bug Mining District, Yavapai County, Arizona, and I have been acquainted with the district for more than three years last past. I am a miner by occupation and have had considerable experience in the management and operation of mining properties. I am acquainted with the "Henry Clay," "George Washington" and "Blind Girl" Mining Claims, situate in Big Bug Mining District, Yavapai County, Arizona, and lying adjacent to the village of McCabe and the McCabe and Gladstone Mines. The latter mines are known as the deep working mines of the immediate vicinity. I am the foreman of the Gladstone Mine. I am acquainted with the value of the "Henry Clay," "George Washington" and "Blind Girl" Mining Claims, claimed to be owned by Priscilla Bradford. In my opinion, these mining claims were in No-
91 vember, 1904, and are now of the value of more than $25000. Further affiant saith not.

ALDEN C. MASSEY.

Subscribed and sworn to before me this 12th day of January, 907.

My commission expires Oct. 16, 1909.
[SEAL.]

DAVID FOLEY,
Notary Public.

92 In the Supreme Court of the Territory of Arizona.

PRISCILLA BRADFORD, Plaintiff and Appellant,
vs.
R. E. MORRISON, Defendant and Appellee.

Affidavit on Appeal.

TERRITORY OF ARIZONA, *County of Yavapai, ss:*

James O'Brien, of lawful age, being by me first duly sworn, says: reside at McCabe, Yavapai County, Arizona. I have lived in avapai County, Arizona, for the past ten years, and at McCabe about x years of that time and continuously during the four years last ast. I am a miner by occupation and have been such for the last venty-five years. I am acquainted with the McCabe Extension

property lying adjoining the village of McCabe, and the McCabe Mining Claim, claimed to be owned by Priscilla Bradford. I am informed that the McCabe Extension Mining Claims are the "Henry Clay," "George Washington" and "Blind Girl." The McCabe Mine and the Gladstone Mine in the immediate vicinity are known as the deep working mines of the district. I am at present the foreman of the McCabe Mine and have been in charge of the development of mining properties during twelve years of my mining ex-
93 perience. I am familiar with the vein indications on the surface of the property that Mrs. Bradford claims, and with the improvements on the surface, and know the underground workings by reputation only. From its close proximity to the adjacent deep working mines, I am of the opinion that the cash value of the plaintiff's three mining claims that I have mentioned was, in November, 1904, and now is more than $25,000.00. Further affiant saith not.

JAS. O'BRIEN.

Subscribed and sworn to before me this — day of January, 1907.
My commission expires Oct. 16, 1909.
[SEAL.] DAVID FOLEY,
Notary Public.

94 In the Supreme Court of the Territory of Arizona.

PRISCILLA BRADFORD, Plaintiff and Appellant,
vs.
R. E. MORRISON, Defendant and Appellee.

STATE OF CALIFORNIA, *County of Los Angeles, ss:*

Elmer R. McDowell, of lawful age, being by me first duly sworn, says:

I am a resident of Los Angeles, California, and in 1904 and prior thereto I was a resident of Prescott, Yavapai County, Arizona. I was a stockholder and Secretary of the McCabe Extension Mining & Milling Company from the time of its organization until the present time. That Company was the owner of the "Henry Clay," "George Washington," and "Blind Girl" Mining Claims, in Big Bug Mining District, Yavapai County, Arizona, from about the time of its organization until Priscilla Bradford, of Corona, California, became the owner thereof through sundry sheriff's sales on judgment rendered against said Company in the District Court of Yavapai County, Arizona. The Company ceased operations about the first of August, 1904. I have had several years' experience as a mining oper-
95 ator. I am familiar with the underground workings and improvements on the above mines and know the value of the mines in November, 1904. In my opinion, the value of said mines was then not less than $25,000, and I believe that they have that value now. Further affiant saith not.

ELMER R. McDOWELL.

Subscribed and sworn to before me this 10th day of January, 1907.
My Commission expires March 4, 1907.

FRANK P. SPROULE,
[SEAL.] *Notary Public, Los Angeles County, California.*

96 In the Supreme Court of the Territory of Arizona.

PRISCILLA BRADFORD, Plaintiff and Appellant,
vs.
R. E. MORRISON, Defendant and Appellee.

STATE OF CALIFORNIA, *County of Riverside, ss:*

Priscilla Bradford, of lawful age, being — me first duly sworn, says: I am the plaintiff and appellant in the above entitled action. I am acquainted with the value of the "Henry Clay," "George Washington" and "Blind Girl" Mining Claims, in Big Bug Mining District, Yavapai County, Arizona, an undivided one-fourth interest of which is in controversy herein; and was so acquainted with the value of said mines in November, 1904. The value of said mines with the improvements thereon was then and is now, more than $25,000.00. Further affiant saith not.

PRISCILLA BRADFORD.

Subscribed and sworn to before me this 8th day of January, 1907.
My commission expires Dec. 27th, 1910.

DANIEL LORD,
[SEAL.] *Notary Public, Riverside County, California.*

97 TERRITORY OF ARIZONA, *County of Maricopa, ss:*

E. M. Sanford, being first duly sworn, says: That on the 10th day of January, 1907, at Prescott, Arizona, affiant served the annexed Notice and Motion, with attached Affidavits, upon the appellee, Hon. R. E. Morrison, by delivering a copy of the same to Allen Hill, he then and there being the law clerk of said Morrison.

—— ——.

Subscribed and sworn to before me this — day of January, 1907.
My commission expires ——.

—— ——,
Notary Public.

(Endorsed:) No. 959. In the Supreme Court of the Territory of Arizona. Priscilla Bradford, Appellant *vs.* R. E. Morrison, Appellee. Motion on appeal. Copy received Jan'y 10, 1907. Robt. E. Morrison, Appellee. Filed Jan'y 19, 1907. F. A. Tritle, Jr., Clerk.

98 In the Supreme Court of the Territory of Arizona.

PRISCILLA BRADFORD, Appellant,
vs.
R. E. MORRISON, Appellee.

Appeal from Yavapai County.

Statement of Facts on Appeal to the Supreme Court of the United States.

An appeal herein to the Supreme Court of the United States having been allowed, the Supreme Court of the Territory of Arizona makes and orders filed this its Statement of Facts on such appeal:

1. That on November 26th, 1904, an action to determine and quiet title to the Henry Clay, George Washington and Blind Girl unpatented lode mining claims, in said County, was, under the provisions of Par. 4104, R. S. Ariz. 1901, commenced in the District Court of Yavapai County, by Priscilla Bradford as plaintiff against Elmer R. McDowell, Thos. D. Bennett and R. E. Morrison, as defendants. McDowell and Bennett made default; R. E. Morrison answered. On the issues and upon an agreed statement of facts, in the trial Court such proceedings were had as that on September 20th, 1905, defendant R. E. Morrison recovered a judgment against plaintiff, Priscilla Bradford, determining and quieting his title to an undivided one-fourth of and in each of said mining claims. From
99 that judgment and from an order denying a motion for a new trial, the plaintiff duly appealed to this Supreme Court, and upon such appeal this Court thereafter and on May 12th, 1906, affirmed the judgment of the trial Court; that afterwards, and on May 28th, 1906, a motion on behalf of plaintiff for a rehearing upon said appeal was denied.

2. That at the dates of the making of the respective locations hereinafter described, the ground covered thereby was unoccupied public mineral lands of the United States of America, and then open to exploration and discovery of minerals.

3. That on June 24, 1893, John F. Morse and Geo. W. Wickler, citizens, discovered mineral in place upon, and duly located on that date the Blind Girl lode mining claim, situate in Big Bug mining district, Yavapai County, Arizona, the notice of location whereof was on June 29th, 1894, duly recorded at Page Four Hundred Ninety-four, of Book Thirty-six, of Mining Records in the office of the County Recorder of said county; that on December 18, 1890, D. C. Wood, a citizen, discovered mineral in place upon and duly located the Henry Clay and George Washington mining claims in said district, and afterwards and on January 29, 1891, the location notices thereof were duly recorded in the office of the said county recorder as follows: The location notice of the Henry Clay, at Page Three Hundred Sixty-five, of Book Thirty-one of said records, and the

notice of location of the George Washington at page Three
00 Hundred Sixty-six, of Book Thirty-one of said records. That said locations are contiguous.

4. That on February 15, 1898, said Geo. W. Wickler conveyed by deed his interest in said Blind Girl location, to said D. C. Wood; That on September 12, 1898, the interest of said John F. Morse in said Blind Girl location became vested in said D. C. Wood, by virtue of proceedings theretofore had for forfeiture of said Morse's interest as co-owner, for want of payment to said Wood as co-owner of annual assessment work on said locations in previous years done by said Wood thereon. That on February 11, 1898, said Wood conveyed by deed to E. G. Wager an undivided one-half interest in and to said mining claims, which said deed was recorded on April 1, 1898, at page Six Hundred Sixteen of Book Forty-two, of deed records of said County Recorder's office.

5. That said E. G. Wager, on the delivery of said deed by said Wood to said Wager, thenceforward continuously to and until the delivery of conveyance from said Wood, Wager and Reese M. Ling to the corporation as hereinafter mentioned, held the paper title to an undivided one-fourth interest in said mining claims in trust for the use and benefit of Reese M. Ling.

6. That on December 23rd, 1899, in a certain action then pending in said District Court, wherein Thos. D. Bennett is plaintiff, and the same E. G. Wager and one Tom Taylor are defendants, said
01 plaintiff recovered a judgment against said defendants for the sum of Two Thousand Seven Hundred Three Dollars and Twenty-five cents, with interest thereon at the rate of one and one-half per cent. per month until paid, and costs of suit taxed at Nineteen Dollars and Thirty-five Cents, which said judgment was afterwards and on December 30, 1899, duly docketed in the office of the Clerk of said District Court.

7. That on December 23d, 1899, the date as aforesaid, of the said judgment and continuously thereafter, until August 27, 1900, the interests of the actual co-owners in said mining claims were as follows, to-wit: Said D. C. Wood, of an undivided one-half; the said E. G. Wager of an undivided one-fourth; and the said Reese M. Ling of an undivided one-fourth.

8. That on August 27, 1900, said D. C. Wood, E. G. Wager, and Reese M. Ling, for a valuable consideration, by a deed in the form known as a mining deed, sold and conveyed the said mining claims to the McCabe Extension Mining and Milling Company, a corporation, having power to take and receive like conveyances, and hold interests in mining claims, which said deed was contemporaneously with its execution, delivered to said corporation, and said deed was thereafter and on February 12, 1901, duly recorded in said Recorder's Office, at page Four Hundred Eight of Book Fifty-three of deed records.

9. That contemporaneously with the delivery of said deed,
02 said grantors placed the said corporation in the actual and exclusive possession of said mines, and said corporation and its assignee, the plaintiff herein, has thenceforward continuously

been and is now in the actual and exclusive possession of said mines and exclusively performing each and every year after the year 1900 to this date, annual labor in excess of the amount of One Hundred Dollars per annum upon each of said claims, and said corporation has during its said possession of said mining claims expended more than Forty Thousand Dollars in improvements in and on said mines.

10. That the said Wager, Wood and Ling, nor either of them nor any one for them or either of them have not since August 27, 1900, been in the possession of any of said mining claims, and they nor any one for them or either of them, have not since that date, done or performed on said mines or either of them any work, labor or improvement constituting annual labor required by the mining laws of Congress to be done on lode claims.

11. That said mining claims have never been patented and the fee to the ground covered by the locations thereof is held by the United States of America.

12. That on November 6, 1902, Amy Hill filed a lien in the office of said County Recorder against said Henry Clay mining claim for materials furnished said McCabe Extension Mining and Mill-
103 ing Company (now designated as and hereafter referred to as the company), and on April 4, 1903, an action was brought by said Amy Hill against said Company to foreclose said lien in said District Court, and numbered as action 3609.

That on March 20, 1903, J. H. Farrell filed a lien in said Recorder's Office against said Henry Clay mining claim for labor done for and material furnished said Company, and afterwards and on April 6, 1903, an action was commenced by said Farrell against said company, in said District Court, to foreclose said lien, and numbered 3612.

That afterwards the said actions 3609 and 3612, were duly consolidated, and afterwards and on December 4, 1903, such proceedings were therein had as that said Farrell duly recovered a judgment against said company for One Thousand Sixty-eight Dollars, and costs taxed at Forty-two Dollars and Seventy Cents, and Amy Hill duly recovered a judgment against said company for One Thousand Two Hundred and Seventeen Dollars and Eighty-three Cents and costs taxed at Thirty-eight Dollars and Eighty-five Cents, and a decree was then entered foreclosing said liens against said Henry Clay mining claim, and directing a sale of said mining claims.

That on March 1, 1904, an order of sale on the judgments so rendered in said consolidated actions was duly issued directed to the sheriff of said County, and thereunder on March 26, 1904, the said Henry Clay mining claim was by said Sheriff sold to Thomas
104 C. Job for the sum of Two Thousand Six Hundred Fifty-six Dollars and Eighty-seven cents, then paid to the said Sheriff, and the Sheriff then issued the duplicate certificates of sale thereon as required by law, one whereof was duly recorded.

That on September 26, 1904, said Thomas C. Job, for valuable consideration, to-wit: the principal and interest therein due on the purchase price of said Sheriff's sale then paid to said Job, did sell

and assign said certificate of sale to said plaintiff and thereafter and on October 26, 1904, the said Sheriff duly executed and delivered to said plaintiff a Sheriff's deed, conveying to her under said judgment, in said consolidated actions, the said order of sale and the sale aforesaid thereunder, the said Henry Clay Mining claim, which said deed was recorded in said Recorder's Office on October 26, 1904, at Page Two Hundred Seventy-four of Book Sixty-nine of deed records.

13. That on June 25, 1903, in a certain action then pending in said District Court wherein R. H. Burmister & Sons Company is plaintiff, and said McCabe Extension Mining and Milling Company is defendant, a judgment was rendered in favor of said plaintiff and against the Company for the sum of One Thousand Eighty-one Dollars and Twenty-one Cents, debt, and costs taxed at Sixteen Dollars and Fifty-five cents, and the attachment lien dating from June 25, 1903, therein was duly foreclosed against all of said mining claims;

105 That on September 30, 1904, an order of sale was issued on said judgment, directed to the Sheriff of said County, commanding him to sell said mining claims, and under said order of sale the said Sheriff on October 31, 1904, duly sold said mining claims to said plaintiff for the sum of Two Thousand and Fifty-one Dollars, then paid by said plaintiff to the said Sheriff and thereupon the usual duplicate certificates of sale thereof were by said Sheriff delivered to the plaintiff. That since the commencement of the action at bar the said Sheriff has executed and delivered to said plaintiff a Sheriff's deed conveying under said judgment order of sale and Sheriff's sale, the said mining claims to said plaintiff.

14. That on October 25, 1904, in an action then pending in said District Court wherein said plaintiff is therein plaintiff, and said company is defendant, the plaintiff duly recovered a judgment against the company for the sum of One Thousand Nine Hundred and Forty-six Dollars and Fifty-five Cents, together with costs taxed at Seventy-six Dollars and Sixty-five Cents, and foreclosing an attachment lien therein against said mining claims. That on October 26, 1904, an order of sale was duly issued on said judgment directed to the Sheriff of said county commanding him to sell said mining claims, according to law, and thereafter, and on November 21, 1904, said Sheriff, under said order of sale, duly sold at public sale all of said mining claims to said plaintiff for the sum of

106 Five Hundred Dollars, then paid by plaintiff to said Sheriff, and thereupon the said Sheriff executed and delivered to said plaintiff the usual duplicate certificates of sale evidencing said sale.

15. That on November 29, 1904, an execution, in due form of law, was issued on said judgment of Bennett against E. G. Wager and Tom Taylor for the sum of Two Thousand Seven Hundred and Three Dollars and Twenty-five Cents, and interest thereon at the rate of one and one-half per cent. per month, from December 23, 1899, until paid, and costs taxed at Nineteen Dollars and Thirty-five cents, and directed and delivered to the Sheriff of said County, and thereunder on November 29, 1904, said Sheriff levied said execution

upon an undivided one-half interest in said mining claims, as the property of said E. G. Wager, and thereafter under said execution and levy the said Sheriff on December 22, 1904, sold, as required by law, among other properties, the said undivided one-half interest in said mining claims to Robt. E. Morrison, defendant for the sum of Twenty-five Hundred Dollars, then paid to said Sheriff, and thereupon duplicate certificates of sale were issued by said Sheriff to said Morrison evidencing said sale.

16. That on the — day of —— 190– and before the commencement of this action and before November 29, 1904, the judgment recovered by Thos. D. Bennett against E. G. Wager
107 and Tom Taylor in case No. 2611 in this court, was for value received assigned to defendant, Robt. E. Morrison, and from the date of said assignment down to and including the time of the filing of the complaint herein, and ever since said defendant Robt. E. Morrison has continued to be the assignee of said judgment, and that defendant Robt. E. Morrison claims an interest in said mining claims under the certificate of sale mentioned in par. 15 hereof and in no other way. That the plaintiff claims title and interests in said mining claims under the deeds and certificates of sale mentioned in paragraph- 12, 13, and 14, herein and in no other way.

17. That on January 19th, 1907, at a term subsequent to that in which this Court rendered a judgment affirming the judgment of the trial Court in said cause, on motion of the appellant, this Court duly determined that the value of the interest and property in controversy between the plaintiff and defendant Morrison in this action, was, at the commencement of the action, and is now of the value of more than Five Thousand Dollars, and, further, allowed an appeal herein to the Supreme Court of the United States; and, further, fixed the amount of the cost bond on appeal at One Thousand Dollars; and further ordered that a Citation on appeal be issued and directed to the defendant, R. E. Morrison, appellee herein; and further ordered and directed that this, its Statement of facts on appeal, be made, allowed, signed and filed herein, which is accordingly
108 done in open court at Phoenix, Arizona, this the 19th day of January, 1907.

JOHN H. CAMPBELL,
Associate Justice, Supreme Court of Arizona.

(Endorsed:) No. 959. In the Supreme Court of the Territory of Arizona. Priscilla Bradford, Appellant, *vs.* R. E. Morrison, Appellee. Statement of facts on appeal to the Supreme Court of the United States. Filed Jan'y 23, 1907. F. A. Tritle, Jr., Clerk.

109 Know all men by these presents: That we, Priscilla Bradford, as principal, and The United States Fidelity & Guaranty Company, a Corporation of Baltimore, Maryland, as surety, are held and firmly bound unto R. E. Morrison in the full and just sum of One Thousand Dollars, lawful money of the United States, to be paid to the said R. E. Morrison, his certain attorney, executors, administrators or assigns; to which payment well and truly to be made

we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 2nd day of February in the year of our Lord one thousand nine hundred and seven.

Whereas, lately, at the January term, 1907, of the Supreme Court of the Territory of Arizona, in a certain suit pending in said Court between Priscilla Bradford as appellant and R. E. Morrison as appellee, an order was entered allowing an appeal to the Supreme Court of the United States from a judgment theretofore rendered in said cause by said Supreme Court of Arizona, against the said Priscilla Bradford and in favor of the said R. E. Morrison, and a citation directed to the said R. E. Morrison, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of October next;

Now the condition of the above obligation is such that if
110 the said Priscilla Bradford shall prosecute her said appeal to effect and answer all damages and costs, if she fail to make her plea good, then the above obligation to be void, else remain in full force and virtue.

PRISCILLA BRADFORD.
[SEAL.] THE UNITED STATES FIDELITY & GUARANTY COMPANY,
By L. B. LARIMER AND JOHN M. ROSS,
Its Attorneys in Fact.

The within bond is hereby approved as to form, amount and sufficiency of sureties.

EDWARD KENT,
Chief Justice of the Supreme Court of Arizona.

(Endorsed:) No. 959. In the Supreme Court of the United States. Priscilla Bradford, Appellant, *vs.* R. E. Morrison, Appellee. Defendant's Cost Bond. Filed Feb'y 12, 1907. F. A. Tritle, Jr., Clerk. By Angie B. Parker, Deputy.

111 In the Supreme Court of the United States.

PRISCILLA BRADFORD, Appellant,
vs.
ROBT. E. MORRISON, Appellee.

Assignments of Error.

Comes now the appellant, Priscilla Bradford, and shows that the judgment of the Court below ought to have been given in favor of the appellant and against the appellee, and assigns as error in the record and proceedings of the Supreme Court of the Territory of Arizona, the following, to-wit:—

Assignment One. That there was error of law in determining that the docketing of the Judgment in Bennett *v.* Wager on December

30th, 1899, in the office of the Clerk of the District Court of Yavapai County, under the provisions of Section 4, Act 56, Session Laws Arizona 1891, and reenacted in Par. 2882, R. S. Ariz. 1901, as follows:

"SEC. 4. Every such judgment, when so docketed, shall for a period of five years from the date of the rendition thereof, be a lien on the *real property* in the *County* where the same is docketed, except the homestead of every person against whom such judgment shall be rendered and docketed, and which he may have at any time thereafter within the period of five years"

created a lien against the interests of E. G. Wager in the unpatented mines in controversy.

Assignment Two. There was error in law in holding that
112 there was not an abandonment, in fact and in law, by E. G. Wager by reason of the making and delivery of the deed by himself and others, dated August 27th, 1900, conveying the mining claims in controversy to the McCabe Extension Mining and Milling Company and contemporaneously therewith putting the Company in the peaceable and exclusive possession thereof, and, in further holding that the alleged general lien of said Judgment thereafter continued against said property.

Assignment Three. There was error of law in holding that the levy made on December 23rd, 1899, under the execution tested November 29th, 1904, issued upon the said Judgment of Bennett *v.* Wager, created a special lien against said property that related back to the date of the docketing of said Judgment, and that the sale of said Wager's interest in said mining claims, under said execution, to the appellee, vested in him an interest and title prior and paramount to the interest, possession and title of the appellant.

Wherefore, appellant prays that the errors of law may be corrected herein, and the affirmance of the judgment of the trial Court reversed, with directions to render a judgment determining and quieting the title of the appellant in and to, all and every part of the mining claims in question as against the appellee, and that appellant recover her costs in this behalf.

E. M. SANFORD,
Attorney for Appellant.

113 (Endorsed:) No. 959. In the Supreme Court of the United States. Priscilla Bradford, Appellant, *vs.* Robt. E. Morrison Appellee. Assignments of Error. Filed Feb'y 14, 1907. F. A. Tritle, Jr. Clerk. By Angie B. Parker, Deputy.

114 In the Supreme Court of the Territory of Arizona.

Be it remembered that heretofore and on to-wit the 9th day of January A. D., 1906, the same being one of the regular juridicial days of the January Term, A. D., 1906, of said Court, the following order, *inter alia*, was had and entered of record in said Court, which said order is in words and figures, as follows, to-wit:

No. 959.

PRISCILLA BRADFORD, Appellant,
vs.
ROBERT E. MORRISON, Appellee.

On motion of Attorney for Appellee herein, it is ordered that the setting of this cause be passed for the present.

And afterwards and upon to-wit, the 20th day of January A. D., 1906, the same being one of the regular juridical days of the January Term A. D., 1906, of said Court, the following order, *inter alia*, was had and entered of record in said Court in said cause, which order is in words and figures, as follows, to-wit:

115 No. 959.

PRISCILLA BRADFORD, Appellant,
vs.
ROBERT E. MORRISON, Appellee.

It is ordered that this cause be submitted on briefs.

And afterwards and upon to-wit the 12th day of May, A. D., 1906, the same being one of the regular juridical days of the January Term A. D., 1906, of said Court, the following order and judgment, *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:

No. 959.

PRISCILLA BRADFORD, Appellant,
vs.
ROBERT E. MORRISON, Appellee.

This cause having been heretofore submitted and by the Court taken under consideration, and the Court having considered the same, and being fully advised in the premises:

It is ordered that the judgment of the lower court be and the same is hereby affirmed.

It is further ordered, adjudged and decreed that the Appellee herein do have and recover of and from Priscilla Bradford, Appellant herein, and Robt. H. Burmister and Homer R. Woods, sureties on Appeal Bond, his costs in this Court, taxed at fourteen
16 and 45/100 ($14.45) Dollars, and his costs in the Court below in this cause incurred.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:

No. 959.

PRISCILLA BRADFORD, Appellant,
vs.
ROBERT E. MORRISON, Appellee.

Comes now Mr. E. M. Sanford for appellant herein, and gives notice of appeal from the judgment of this Court, to the Supreme Court of the United States, and moves the Court that the appeal be allowed.

It is ordered that said motion be granted and the appeal be and the same is, hereby allowed.

It is further ordered that the amount of the Bond on Appeal be fixed in the sum of One Thousand ($1,000) Dollars.

And afterwards and upon to-wit the 28th day of May A. D., 1906, the same being one of the regular juridical days of the January Term A. D., 1906, of said Court, the following order, *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:

117 No. 959.

PRISCILLA BRADFORD, Appellant,
vs.
ROBERT E. MORRISON, Appellee.

It is ordered that the Motion for re-hearing filed herein by Appellant, be submitted.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:

No. 959.

PRISCILLA BRADFORD, Appellant,
vs.
ROBERT E. MORRISON, Appellee.

It is ordered that the Motion for re-hearing filed herein by Appellant, and heretofore submitted, be and the same hereby is, denied.

And afterwards and upon to-wit the 19th day of January A. D., 1907, the same being one of the regular juridical days of the January Term A. D., 1907 of said Court, the following order, *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:

118 No. 959.

PRISCILLA BRADFORD, Appellant,
vs.
ROBERT E. MORRISON, Appellee.

On motion of Mr. E. M. Sanford, attorney for Appellant herein, it is ordered that he be granted permission to file Motion for Allowance of Appeal to the Supreme Court of the United States from the judgment heretofore rendered by this Court in said action.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

No. 959.

PRISCILLA BRADFORD, Appellant,
vs.
ROBERT E. MORRISON, Appellee.

The Motion for Allowance of Appeal to the Supreme Court of the United States from the judgment heretofore rendered by this Court in this cause, filed herein by Appellant, having been heretofore submitted and by the Court taken under advisement and the Court having considered the same and being fully advised in the premises:

It is ordered that said Motion be granted, the appeal prayed for be, and the same is, hereby allowed, the value of the property
119 in controversy exceeding the sum of five thousand dollars ($5,000), and

It is further ordered that Citation issue on Appellant's filing a bond in the sum of one thousand dollars ($1,000) with two or more good and sufficient sureties, and remittitur stayed for sixty days.

120 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *Territory of Arizona, ss:*

I, Frederick A. Tritle, Jr., Clerk of the Supreme Court of the Territory of Arizona, do hereby certify that the foregoing pages, numbered from 1 to 119, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Priscilla Bradford, Appellant, against Robert E. Morrison, Appellee, as the same remain of record and on file in my office.

I further certify that the citation attached hereunto is the original Citation issued by said Supreme Court of the Territory of Arizona.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Supreme Court, at Phœnix, Arizona, this 2nd day of March, A. D., 1907.

[Seal Supreme Court of Arizona.]

FREDERICK A. TRITLE, JR.,
Clerk Supreme Court of Arizona.

121 The United States of America to Hon. Robt. E. Morrison, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, within sixty days from the date hereof, pursuant to an appeal taken to said Supreme Court of the United States from a judgment of affirmance in a certain action wherein Priscilla Bradford is appellant and you, the said Robt. E. Morrison, are appellee, lately rendered in the Supreme Court of Arizona, and there show cause why the said judgment should not be corrected, and why speedy justice should not be done to the appellant in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 11th day of February, in the year of our Lord One Thousand Nine Hundred and Seven.

EDWARD KENT,
Chief Justice Supreme Court of Arizona.

122 TERRITORY OF ARIZONA, *County of Yavapai, ss:*

On this 16th day of February, 1907, Horace C. Bowdre, a Deputy Sheriff in and for said County, personally appeared before me, the subscriber, a Clerk of the District Court in and for said County, and makes oath that on that day, at said County, he personally delivered to Robt. E. Morrison, appellee in the action therein entitled, a true copy of the annexed Citation.

HORACE C. BOWDRE.

Subscribed and sworn to before me this 16th day of February, 1907.

[Seal District Court, Fourth Judicial District, Yavapai Co., Arizona.]

J. M. WATTS,
Clerk District Court of Yavapai County, Arizona.

123 Office of the Sheriff of Yavapai County, Arizona. Received February 15th, 1907, at 4:30 o'clock P. M. J. R. Lowry, Sheriff. By H. M. Neagle, Under Sheriff.

[Endorsed:] No. 959. In the Supreme Court of the United States. Priscilla Bradford, Appellant, *vs.* Robt. E. Morrison, Appellee. Citation. Filed March 29, 1907. F. A. Tritle, Jr., Clerk. G. M. Sanford Attorney-at-Law Prescott, Arizona.

Endorsed on cover: File No. 20,667. Arizona Territory supreme court. Term No. 280. Priscilla Bradford, appellant, *vs.* Robert E. Morrison. Filed April 18th, 1907. File No. 20,667.

MAR 27 1908
JAMES H. McKENNEY,
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907

No. 60.

PRISCILLA BRADFORD, Appellant

vs.

ROBERT E. MORRISON, Appellee

BRIEF OF APPELLANT

APPEAL FROM SUPREME COURT, TERRITORY OF ARIZONA

E. M. SANFORD,
Attorney for Appellant

(20,667.)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907

No. 280

PRISCILLA BRADFORD, Appellant

vs.

ROBERT E. MORRISON, Appellee

BRIEF OF APPELLANT

STATEMENT OF CASE.

This is a statutory action brought in the District Court of Yavapai County, Arizona, against Appellee, Elmer McDowell and Thomas D. Bennett, to quiet interests in the Blind Girl, Henry Clay and Washington unpatented mining claims, in Big Bug District, Yavapai County, Arizona. McDowell and Bennett did not answer. Mr. Morrison, as the assignee of Bennett, filed an amended answer (Tr 5) containing a special denial that Appellant is the owner of the property; it sets up that he is the assignee of Thomas D. Bennett of a certain judgment recovered in the same court on December 29, 1899, for the sum of $2,730.25, with interest and costs, recovered in case No. 2611, wherein Thomas D. Bennett is plaintiff and Tom Taylor and E. G. Wager are defendants, and duly docketed December 30, 1899, at page 149, of Book 2 of Judgment Docket records of the Clerk's Office of the same court, and alleges that said judgment is a lien on said mining claims.

The case was submitted to the trial court on an agreed statement of facts (Tr 21), which resulted in a judgment quieting the plaintiff's interests to an undivided three-fourths of the loca-

tions as against the defendants; and, quieting Appellee's interests as against the plaintiff and the other defendants as to the remaining one-fourth of the locations. (Tr 6.)

An appeal was taken to the Supreme Court of the Territory and the judgment affirmed. (Tr 53.) The appeal was taken to this court (Tr 54) upon a statement of facts found by the Territorial Supreme Court. (Tr 46.)

STATEMENT OF FACTS.

Briefly, the mining claims in controversy are unpatented lode claims. (Tr. 48-Fdg. 11.) The judgment in Bennett v. E. G. Wager was rendered December 23, 1899, and docketed December 30, 1899. (Tr. 47-Fdg. 6.) On December 23, and continuously thereafter until August 27, 1900, the actual co-owners of said mining claims were: D. C. Wood, one-half; said E. G. Wager, one-fourth, and Reese M. Ling, one-fourth. (Tr. 47-Fdg. 7.) On August 27, 1900, Wood, Wager and Ling, by a mining deed, conveyed these claims to the McCabe Extension Mining and Milling Company, a corporation (Tr. 47-Fdg. 8), and contemporaneously with the delivery of that deed the grantors placed the corporation in the actual and exclusive possession of said mines. Said corporation and its assignee (the plaintiff) has thenceforward continuously been and is now in the actual and exclusive possession of said mines and exclusively performing each and every year after the year 1900, to this date (findings filed January 23, 1907, Tr. 50, Folio 108), annual labor in excess of the amount of $100.00 per annum upon each of said claims. Said corporation during its said possession expended more than $40,000.00 in improvements in and on said mine. (Tr. 47-48-Fdg. 9.) Wager, Wood and Ling (the grantors of the corporation), nor either of them, nor any one for them, have not since August 27, 1900, been in the possession of any of said mining claims, and they nor anyone for them, or either of them, have

not since that date, done or performed on said mines or either of them any work, labor or improvement constituting annual labor required by the mining laws of Congress to be done on lode claims. (Tr. 48-Fdg. 10.) Plaintiff claims under conveyances through sundry execution and judicial sales made under writs issued on judgments rendered against the corporation and is in the actual and exclusive possession. (Tr. 48-49-Fdgs. 12-13-14.) Under one of said sales a deed was delivered to plaintiff on October 26, 1904 (Tr. 49-folio 104), and related back to November 6, 1902, the date of the filing of the lien. (Tr. 48-Fdg. 12.) Since the commencement of the action a deed under a judicial sale made on another like judgment has been delivered to plaintiff. (Tr. 49-folio 105.) Under another like judgment plaintiff also claims under a certificate of sale . (Tr. 49, folio 106.) On November 29, 1904, an execution was issued on the judgment of Bennett v. Wager, et al., and levied upon an undivided one-half of the mining claims as the property of said Wager and the sale under that levy occurred on December 22, 1904, to the defendant Morrison (Appellee here), and a certificate of sale was issued to him for that interest. (Tr. 49-50, Fdg. 15.)

ASSIGNMENTS OF ERROR.

Assignment One. That there was error of law in determining that the docketing of the judgment in Bennett v. Wager on December 30, 1899, in the office of the Clerk of the District Court of Yavapai County, under the provisions of Section 4, Act 56, Session Laws Arizona 1891, and re-enacted in Par. 2882, R. S. Ariz. 1901, as follows:

"Sec. 4. Every such judgment, when so docketed, shall for a period of five years from the date of the rendition thereof, be a lien on the real property in the county where the same is docketed, except the homestead of every person against whom such judgment shall be rendered and docketed, and which he may

have at any time thereafter within the period of five years," created a lien against the interests of E. G. Wager in the unpatented mines in controversy.

Assignment Two. There was error in law in holding that there was not an abandonment, in fact and in law, by E. G. Wager of his interest in said mining claims by reason of the making and delivery of the deed by himself and others dated August 27, 1900, conveying the mining claims in controversy to the McCabe Extension Mining and Milling Company and contemporaneously therewith putting the company in the peaceable and exclusive possession thereof, and, in further holding that the alleged general lien of said judgment thereafter continued against said property.

Assignment Three. There was error of law in holding that the levy made under the execution tested November 29, 1904, issued upon the said judgment of Bennett v. Wager, created a special lien against said property that related back to the date of the docketing of said judgment, and that the sale of said Wager's interest in said mining claims, under said execution, to the appellee, vested in him an interest or title, prior and paramount to the interest, possession and title of the appellant.

Assignment Four. The judgment is contrary to the land in that an unpatented mining claim is not the subject of a judgment lien, and if it were, the lien was destroyed by the judgment debtors abandonment on August 27, 1900.

ARGUMENT.

Assignment of Error One.

Did the docketing of the Bennett-Wager judgment on December 30, 1899, create a general lien on the unpatented mining claims in controversy?

The statute then in force and quoted in the assignment, reads:

"Sec. 4. Every such judgment, when so docketed, shall for a period of five years from the date of the rendition thereof, be a lien on the real property in the county where the same is docketed." * * *

Construction. "Real property" as used in this statute means a free hold estate—a legal estate. The peculiar sense in which a word is used is to be determined by the context of the statute. By collecting from the intention of the legislature, the terms are to be understood as having a regard to the subject matter; for that, it is to be remembered, will always be in the eye of the framer of the law, and all his expressions directed to that end. Thus, the term "Maintenance" is in itself and abstractly, equivocal; but when we find the statutes in which it occurs directed against the encouragement of litigation, and the upholding of parties to suits, we easily perceive what was designed to be presented. Potters-Dwarris Stat. (1st Ed.) 196-201. The meaning of a word which is susceptible of different meanings must be determined from the context, and the subject matter of which the law makers are speaking. Perrin v. Chesapeake Co., 9 How. 190.

Courts, in defining the term "Real property" in judgment lien statutes, have followed that line of definition which has recourse to and involves jurisdiction of courts over like estates, and give to the term a construction applicable only to those estates in which the common law court had jurisdiction, namely, legal estates and in this sense, the term is aplied to quantity or degree of estate so that reference must be had to common law proceedings for the collection of a judgment for a correct interpretation.

Estates. The term "estate" in its broadest sense means the condition or circumstances in which the owner stands with reference to this property, or, as applicable to this case are divided into legal and equitable estates.

Legal Estates. The term "real estate" is such an interest in

things real as is cognizable in and will be protected by a court of law—a freehold estate which is classified as an estate of indeterminate duration, other than an estate at will or by sufferance, and includes an estate in fee simple, for life, widowhood or during coveture. An estate less than a freehold is classed either as a chatter or an equitable estate.

The elements of a lien are: 1. Jurisdiction to render judgment. 2. Statutory authority to docket and docketing, and, 3. Real property.

In Jeffry v. Moran, 101 U. S. 285, the court speaking of judgment liens, said:

> "No reasoning can successfully maintain that a claim merely in judgment, and a judgment lien are the same thing, in legal effect any more than in fact. To hold otherwise would be to make the law, and not simply to apply it. It is only when a claim has ripened into a judgment, where there is property to be bound by it that a lien can subsist. This element is indispensable under the law to such a result."

In Merry v. Hallet, 2 Cowen 498, it is said that a judgment is a lien on freehold estates only, and the term "real estate" when applied to an interest in lands or other real property includes all estates or interests in such real property which are held for life or some greater estate. Westervelt v. The People, 20 Wend. 417. So the lien can attach only upon property in which the debtor has a vested legal interest. People v. Irwin, 14 Cal. 434. Riley v. Nance, 31 Pac. 1126. Sommerville v. Stockton &c Co., 76 Pac. 246. "At common law a judgment did not attach to a mere equity, though the equity was accompanied by possession. This rule of the common law prevails in several of the United States, and is generally applied in the absence of any statute undoubtedly creating a different rule." 2 Freeman Judgment, (4th Ed.), Sec. 348. See, also, Smith v. Ingles, 2 Or. 43; Bloomfield v. Humason, 11 Or. 229, 4 Pac. 332, Nessler v. Neher, 18 Neb. 649,

26 N. W. 471; Terrell v. Prestel, 68 Ind. 86, Baird v. Kirtland, 8 Ohio, 21, Harrington v. Sharp, 1 G. Greene, 131, Merry v. Hallet, 2 Cow. 497, Modisett v. Johnson, 2 Blackf. 431. And while the tendency of American statutes upon the subject is to make judgments a charge upon whatever estate the debtor may have, without regard to whether his title is legal or equitable (12 Am. & Eng. Enc. Law, p. 107), it is firmly settled by the authorities above cited that, in the absence of such a statute no lien or charge is created against an equitable interest or estate by the docketing of a general judgment. Our statute (section 5132, 2 Ballinger's Code; section 460, Hill's Code) makes the judgment a lien upon "the real estate of any judgment debtor." In construing a similar statute the supreme court of Iowa, in Harrington v. Sharp, supra, say: "By the language 'real estate of the person' we understand that the fee simple, or estate of inheritance, must be in the person, in order to have the judgment against him operate as a lien upon the land." And under the authorities such a statute does not make the judgment a lien upon the equitable estate of the judgment debtor. Neither at common law nor under our statute is such an interest affected by the docketing of a general judgment.

Phoenix &c Co. v. Scott, 54 Pac. 779.

Equitable Estates. At common law a judgment was not a lien on mere equitable estates.

Massingdale v. Downes, 7 How. 760.
Morsell v. Bank, 91 U. S. 360.
Cooke v. Avery, 147 U. S. 389.
12 Am. Enc. of Law, 1st ed. 103 note 3.
Sommerville v. Stockton Milling Co., 76 Pac. 246.
Bloomfield v. Easton, 45 Pac. 681.
Merry v. Hallet, 2 Cow. 497.
In re Estes, 3 Fed. 141.
Sweezy v. Jones, 21 N. W. 47.
Nessler v. Neher, 26 N. W. 47.
Jenkins v. Fahey, 73 N. W. 362.

The conclusions to be drawn from these decisions are: That without the aid of the statute there can be no lien under the term "Real property" upon chattels real, or equitable estates without the addition of equivalent language which would include such chattels and estates. The reasons for the rule are well given in Brandies v. Cochran, 112 U. S. 330, appealed from Illinois, where the lien statute ran against "all legal and equitable rights and interests in land," and in Commissioners Freedman Saving and Trust Co. v. Earl, 110 U. S. 712, where it is said:

> "At common law executions upon judgments could not be levied upon estates merely equitable because courts of law did not recognize any such titles and could not deal with them, and this is true, although the equitable estates were such as could be assigned, conveyed, or devised, and were subject to the rules of descent applicable to real estate. The statute of frauds, 29 Car. II. c. 3, did not extend to chattels real. The effect of this statute was to enlarge the operations upon legal estates, so the corresponding equitable remedy as to equitable estates was also enlarged. The ground of the jurisdiction therefor, is not that of a lien or charge arising by virtue of the judgment itself, but of an equity to enforce satisfaction of the judgment itself."

What is the nature of the interest which a judgment debtor holds as locator or assignee of the locator, in an unpatented mining claim?

Prior to the opinion by Associate Justice Peckham, in Black v. Elkhorn &c Co., 163 U. S. 445, there seems to be an uncertainty and wide difference of opinion as to the nature of this estate. At common law there is no classification of estates or interests in lands that can be properly applied to this statutory grant. It may be termed a chattel in the sense that it is an asset. As an estate in possession it is subject to inheritance and is assignable by the voluntary act of the locator or his assigns. It may be said to be a chattel real as it is inheritable and assignable by the terms of the grant, and as such would be personal property. The

common law term of easement has often been applied, but that is only similar in that there is a dominant and servient right. It is unlike this grant, in that at common law an easement is not assignable or inheritable, yet is the subject of dower under the common law and community interests under the civil law. The two are alike in that an easement may be made, and this grant is made, subject to conditions subsequent.

Ballinger on Mines, 54.
10 A. & E. Enc. of Law (2d ed.), 404. Note 1.

Salem &c Co. v. Stayton &c Co., 33 Fed. 154.

Under the federal decisions the interest of a locator in an unpatented mining claim is not the subject of dower or community interest.

Black v. Elkhorn M. Co., 163 U. S. 445.
McAllister v. Hutchinson, 75 Pac. 41.

The rights of the locator perhaps are more nearly analogeous to a "license" and "bond to convey" than any other terms of the common law. As a licensee "he has no interest, or property, or estate in the land itself, but only in the proceeds, and in such proceeds, not as realty, but as personal property."

Wheeler v. West, 11 Pac. 73.
Cowles v. Kidder, 41 Pac. 16.

There is no rent reserved. It stands as a permit to mine—a mere incorporeal hereditament.

13 Enc. Law (1st ed.) 539.
Lindley on Mines 860.

It is unlike the common law license in this, that there it could be revoked by the grantor, while here it is revokable only at the election of the licensee.

As a mining bond to convey he obtains no estate in the land, or vested right to purchase, or to claim a patent.

Benson &c Co. v. Alta &c Co., 145 U. S. 128.
Black v. Elkhorn &c Co., 163 U. S. 445.

There are conditions precedent to the creation of the right,

namely: Unappropriated public mineral lands; discovery and citizenship. These conditions complied with, a right of possession and operation is created, personal in character, yet subject by statute to inheritance and assignment. So long as the fee remains in the government these rights are subject to control through department rules and regulations as to cutting and using timber, character of work and other matters. The tenure is not of a determinate duration. The term is uncertain and is left to the locator's whim to terminate it through failure of conditions subsequent on his part. If he performs the annual labor for a given year, and he does not abandon the claim, the tenure runs to the end of the following year; at the end of that year one of two things must happen; if the term is to be extended the annual labor must be done for that year; otherwise, the tenure is terminated and there is a forfeiture to the public. If today he completes the annual labor for this year, to-morrow he may abandon the claim to the government. This is so, on the theory, that the ore shoots may be lost, a floor found, the vein may pinch out, or the indications fail, and of these matters he is the sole judge as to whether or not it will pay to labor further in his hunt for the precious metals on that location. In the event of forfeiture as above illustrated, as contradistinguished from forfeiture by advertising out, and by abandonment as here mentioned, the ground becomes, immediately, public lands and subject to location by any citizen. These are lawful rights vested in the locator and his assignee, by the grant itself, which cannot be questioned by any judgment lien creditor. These privileges do not come within the definition of a common law license for that was not inheritable or assignable. There is a contract to convey the fee dependent upon conditions subsequent, such as doing $500 worth of work; applying, under rules, for the purchase of the fee and paying the purchase price, but there is nothing in such pro-

ceedings that creates an estate in lands.

In Black v. Elkhorn M. Co., 163, U. S. 445, no name is given to these statutory granted rights but is described as:

> "(1) That no written instrument is necessary to create it. Locating upon the land and continuing yearly to do the work provided for by the statute, gives to and continues in the locator the right of possession as stated in the statute. * * * The interest in a mining claim is nothing more than a right to the exclusive possession of the land, based upon conditions subsequent, a failure to fulfill which forfeits the locator's interest in the claims. * * * The rights are personal to the locators, their heirs and assigns."

"Congress has seen fit to make the possession of that part of the public lands which is valuable for minerals separable from the fee, and to provide for an exclusive right of possession, while the paramount title to the land remains in the United States." In furtherance of this policy it was enacted: (13 Stat. at Law 441 Ch. 67, Sec. 9, R. S. 910) "That no possessory action between individuals in the courts of the United States for the recovery of mining titles should be affected by the fact that the paramount title to the land was in the United States, but that such case should be adjudged by he law of possession." Belk. v. Meagher, 104 U. S. 281. Manuel v. Wulff, 152 U. S. 505. Noyes v. Mantle, 127 U. S. 351 Congress at the passage of the mining laws evidently had in view that the granted rights in so far as possession and operation is concerned were chattel interests and similar rights under the terms easement and license not being inheritable or assignable at common law extended the rights to "heirs and assigns."

Interpretation of this statute by reference to collateral statutes.

The following statutes cannot be used as a legislative construction of the phrase "real property" as applicable to or fixing

the meaning of the term as used in the judgment lien statute.

Redemption. Sec. 2575 R. S. 1901 reads:

> "Upon sale of real property the purchaser is substituted to and acquires all the right, title and interest and claim of the judgment debtor thereto, and when the estate is less than a leasehold of two years unexpired term the sale is absolute. In all other cases including sales under order of court in foreclosure suits, the property is subject to redemption as provided in the following section. The officer selling real estate must give to the purchaser a certificate of sale."

In Sommerville v. Stockton &c Co., 76 Pac. 246, the court had under consideration section 700 of the Cal. C. C. P. identical with our 2575. It was there said: "Section 700, Code Civ. Proc. provides that 'upon a sale of real property the purchaser is substituted to and acquires all the right, title, interest and claim of the judgment debtors thereto; and when the estate is less than a leasehold of two years unexpired term, the sale is absolute,' and that otherwise it is subject to redemption as therein prescribed. This, however, cannot be considered as a legislative construction of the phrase 'real property,' applicable to and fixing the meaning of the same phrase where used in section 671, providing for judgment liens."

In People v. Westervelt, 17 Wendell 676, the judgment lien statute under consideration was against "lands, tenements, real estate, and chattels real," and speaking of the right of redemption, the court said: That a distinction was to be drawn between the statute permitting redemption and the judgment lien statute, and further says:

> "Looking at the system of lien and redemption, and seeing that the attention of the legislature was expressly drawn to the distinction between freehold and terms, with the course of previous legislation and decision upon that distinction, no question can remain that all such terms were intended to be left like other chattels, to an immediate sale and assignment by execution.

The only point in which they are made to resemble freehold is in subjecting them to the lien of the judgment.

Westervelt v. People, 20 Wend. 417.
Ex Parte Wilson, 7 Hill, 150.

Under this reasoning it would appear that there is no right of redemption in unpatented mining claims.

Descents and Distribution. Our statutes of descents do not define the quality or quantity of the estate in an unpatented mining claim that goes to the heirs. Such right of inheritance is derived from R. S. U. S. Sec. 2322, which provides that the locators, their heirs and assigns, shall have the exclusive right of possession, etc. The heirs are not parties to this suit, and the quantity of distribution, i. e. whether it descends as personal or real property, is not involved, but the subject is introduced to aid in the application of the rule of interpretation of the phrase "real property."

Congress has made said rights inheritable, but that does not change the nature of the rights. During the rise of the "South Sea Island Bubble" the people of England became so desirous of investing in its stock that an act was passed enabling guardians and other trustees to sell freehold estate and invest in the stock, and under it such procured stock and its proceeds descended as real estate, but that did not change the character of the stock from personal to real property. So, in McLean v. Rockey, Fed. Cas. 8, 891, it was said: "The Ohio code of 1837 and 1839, provided that a permanent leasehold estate should descend as land. This innovation, it would seem, should not change the nature of such an estate beyond the express words of the statute. It does not subject such an estate to the lien of a judgment. In Kentucky, by an express statute, negroes descend as real estate, and yet this does not make negroes land. The same quality, at the legislative discretion, may be imparted to any other personal property: that would not change the nature

of the legal designation of such property beyond the words of the statute."

Under Art. 5, Chap. IX., Tit. 17, Par. 213, et seq. R. S. Ariz. 1901, if any portion of an estate of a decedent, infant, or incompetent person shall consist of mining property a petition may be filed, ten days' notice given and the property ordered sold and a deed delivered on compliance with the order. A similar statute is enacted by Par. 1772 for mining claims, interests in mines or shares of stock. By Par. 1777 of the same laws real estate of a decedent is sold according to the general surrogate practice in disposing of lands and tenements. These special statutes are styled "Summary sales of mines and mining interests," and the method pursued is similar to the usual surrogate practice in selling chattels. From these authorities it would appear that the estate in an unpatented mining claim, upon the death of the owner, passes, as personal property to the personal representative and does not descend as real estate unless there be an express statute to the contrary.

Conveyances. Par. 733 R. S. 1901. (Par. 228, R. S. 1887) reads: "The term 'land' as used in this title is declared to mean and include mining claims."

This enactment as well as Pars. 2708 and 2848, R. S. 1901, confines the definition of "land" and "real estate" to the provisions of the title or chapter in which the definition appears, and so reserves the definition from application to other statutes. The "Title" relates to conveyances. It does not create or define estates. It provides for the evidence of transfers of title and the nature of estates described in the conveyance. The intention of Par. 228, evidently was to make transfers of the "estate in possession and inheritance" in a mining claim, evidenced by writing, but did it do so? The estate in an unpatented mining claim is "in possession" subject to a condition contingency or subsequent.

Its inheritable qualities are subject to these conditions. The right of inheritance may exist today but tomorrow and before death of the locator this right may be extinguished by abandonment or forfeiture in law and could not be a subject of contest by the heirs. The sections of that title in which the word "land" is used are 214, 216, 217. By 214, "no estate of **inheritance of freehold,** or for a term of more than one year in lands and tenements shall be conveyed unless the conveyance shall be declared by an instrument of writing." The use of the words "inheritance or freehold" refer to degrees of estate and should be construed according to their common law meaning, as they are technical words, well defined, namely: "Estates of freehold," again are either (1) estates of inheritance, which includes estates in fee simple, tail, and, in frank-marriage; or estates not of inheritance. R. & L. Law Dict. Estate, Sec. 9. Here estate in inheritance denotes a degree or quantity of estate, to-wit: A fee title. Estates in possession is not an estate in inheritance at common law. Par. 228 does not make estates in possession a part of the common law estate of inheritance. The locator has no fee in his estate. Yet the court's reason that because "lands" are to include mining claims whether patented or unpatented, and the estate in inheritance having been by act of Congress included in an estate in possession the transfer of these estates must be in writing, but even that does not make mining claims "Real property" within the meaning of the judgment lien act. Par. 216, possibly may include mining claims in the work "lands" where the conveyance purports to convey a fee when the mining claim is patented, but this is in conflict with Par. 217, where there is no limitation in the granting clause the degree of the estate conveyed "shall be deemed a fee simple title." These two sections possibly refer to degrees of estate, in the transfer of titles, to agricultural and town lands, and not to mining claims, for the legislature must take cogniz-

ance of an act of Congress, and that the mining laws grant only an estate in possession and inheritance, subject to conditions subsequent, retaining the fee in the government until paid for, and therefore when an unpatented mining claim is conveyed the legislature has no power to say that a fee estate is conveyed or that it shall be so presumed. Hence the word "lands" in Pars. 216, 217 ought not to include mining claims.

The most that Appellee can ask for Par. 733 (228) is that the word "lands" in Par. 214 is extended to mining claims for the purpose of having a writing instrument evidence the transfer to another.

Prior to this statute written conveyances were not necessary to transfer interests to another in unpatented mining claims.

Black v. Elkhorn M. Co., 163 U. S. 445.
Mining Co. v. Taylor, 100 U. S. 37.
Doe v. Waterloo & Co., 70 Fed. 459.

Par. 228, and similar statutes are for the benefit of and to protect the purchaser of, or the assignee of, the locator's rights.

Fraud and Fraudulent Conveyances. Par. 2708 reads: "The term 'real estate' as used in this title shall be deemed to include mines and mining claims."

This act refers to fraud and fraudulent conveyances and extends to mining claims the equitable remedies as provided by that doctrine. Expression is made in many cases that a mining claim is property (Black v. Elkhorn &c Co., 163 U. S. 445), but when so used it is in the sense that it is property "that goes to make up one's wealth," and is not intended to be used in reference to a degree of estate. It is in the sense of "assets" that the statute applies. While the conditions subsequent are personal to the owner in an unpatented mining claim, and the right of abandonment or forfeiture may be exempted from the equitable doctrine that ordinarily attach to fraudulent conveyances, yet,

that question is not involved in this case except as a matter of collateral statutory construction of the judgment lien statute.

If fraud in fact, under the doctrine of fraudulent conveyances, is to be considered as a foundation for a cause of action in advertising out, abandonment to another, or abandonment or forfeiture to the government, then it must be alleged and proven. There is no allegation or proof of fraud in fact in this case. This case is to be determined by applied law. The constituent elementary qualities which exist in this grant abhors the doctrine. The co-owner is given the right of failure to do his proportion of the annual labor and the grant gives to a co-owner the authority to advertise out the delinquent. Intent to defraud a creditor is not an element in the process. As between the government and the locator the only intent involved is that to abandon and forfeit, and the motive of that intent is not to be considered by the government. Congress must have had in view the doctrine of fraudulent conveyances when the act was created. It knew that it was possible for one co-owner to become involved in debt and might prevent a levy on his estate through pre-arrangements with another co-owner to advertise him out; or without a co-owner, he could abandon instanter, or forfeit to the government and thus deprive a creditor of a visionary asset property. A levy of execution pending delinquency would be of no avail to the creditor for the co-owner could in the course of an indefinite period, extending over a year and years, advertise out the delinquent, and this process would clear the estate of the delinquent from the results of the levy, and vest the interest in the co-owner who advertised the others out as against the levying creditor. Conditions subsequent were never the subject of this doctrine as applied to the servient owner. Jurisprudence requires that there be necessary parties to an action of fraud which includes participants and those who have received the benefits of the fraud.

The government does not participate in the acts of the locator, but defines and establishes what acts shall constitute abandonment or forfeiture and receives the benefits, yet the sovereign is a necessary party, but cannot be made such, for it cannot be sued. What contractual relations there are, if any, are between the government and the locator, in which neither the latter's creditors, nor the public, have any interest and cannot be heard to complain of the failure of a locator to perform any of the conditions of the grant established by the owner of the dominate estate. Are creditors, under these conditions to be permitted to come into court and say that a locator owes me: I know he did not do the annual work required by statute; this forfeiture is a fraud on me and the judicial department must compel the executive department to revest the locator with the estate so that the debt may be collected. This condition is the very one the statute is framed to and does prevent. If forfeiture and abandonment to the government—the strongest elements of the grant—are not the subjects of the doctrine, then abandonment by conveyance to another—a weaker element—and advertising out—the weakest element—are not the subject of fraud in fact or in law. It is a rule that the father may spank the child, but it is not customary for the child to spank the father until it becomes physically able. So, in legislative matters, the territorial legislative child may not pass laws inconsistent with the constitution and laws of the United States, yet, when an Arizona legislature reaches a physical condition, through statehood, it may be able to do some spanking with a law inconsistent with an act of Congress, but it is now constitutionally incompetent to exercise that power. The attempt of the territorial legislature to legislate into this Congressional grant, the doctrine of fraudulent conveyances, as applied to abandonment and forfeiture of estate, is ineffective for that purpose, and because of this, no judgment lien creditor can

apply, through the judicial department, the doctrine of fraud in fact or in law to abandonment of an unpatented mining claim, as that injects into the grant conditions not inacted or intended.

Limitation of Actions. Par. 2948 reads: "The words 'real property,' whenever used in this title is taken to include mines

This statute relates to the limitation of actions and extends only to the time in which proper remedies involving mining claims may be enforced.

Definition Statutes. Par. 2932. Sub Div. 5, R. S. 1887, in force in December 1899, reads: "The words 'real property' are co-extensive with lands, tenements and hereditaments."

This statute was repealed September 1, 1901, and before execution issued in this case. (Par 4234 R. S. 1901.) It was re-enacted March 5, 1907. Sess. Laws, 1907, Chap. 10, Sub. Div. 5, p. 8.

This is practically an adoption of the common law, and is well considered in the re-hearing case of Nessler v. Neher (Neb.), 26 N. W. 47.

Morsell v. Bank, 91 U. S. 360.

Cooke v. Avery, 147 U. S. 389.

When the meaning of these words in this statute are to be interpreted, reference must be had to the subject matter, thus: When "lands" in a conveyancing statute include mining claims the evidence of the abandonment to another, and not to the government, must be in writing, but it does not change the character of the estate; in judgment lien statutes, using the words "real property," reference is had to the degree of estate; in statutes relating to descents the inheritable qualities in unpatented mining claims are personal in their character to the heirs; the quantity of estate is not raised to a fee simple, but must be inherited as the nearest similar chattels at common law descend, unless there is a statute that abrogates the common law in this

respect; in fraudulent conveyance statutes, remedies which are applicable to "lands" are extended to the estates held in mining claims; in Limitation of Actions, reference is made only to time in which remedies may be enforced, and, in Remedial Statutes, like actions to "quiet titles," the term "real property" has a more flexible and extended meaning, for a complaint of this character not only includes all the chancery remedies applicable, but it covers the whole equity jurisprudence and adds additional equity jurisprudence to be applied to the intention of the statute creating the remedy.

In Buckingham v. Reeves, 19 Ohio 399, it was held that lands and water power upon the canals and rivers leased by the state are not subject to judgment liens, since such leases lack that character for permanency and stability which is requisite to elevate them to a standard of "lands and tenements," which alone are subject to judgment liens.

Statutory action to quiet title. The court below from which this action was directly appealed to this court by way of emphasizing its unfortunate construction of the term "real property," in its opinion, says: "Indeed, the action brought by the plaintiff herself to quiet her title is brought under the provisions of the statute authorizing actions to quiet title to real property, and can only be maintained under the statute upon the theory that such interest in the mining claims is real property." (Tr. 36, folio 76.)

Paragraph 4104, R. S. 1901, reads:

> "An action to quiet title to **real property** may be brought by any one having, or claiming, **an interest therein,** whether in or out of the possession of the same, against any person or corporation, or the Territory of Arizona, when such person, corporation or Territory claims any **estate** or **interest,** adverse to the party bringing the suit; in, or to the real estate, the **title to which** is to be determined or quieted by the action brought."

This statute creates a statutory remedy—"a judicial means of enforcing a right, or redressing a wrong"—defined in Zumalt v. Madden (Wyo.), 31 Pac. 400; to be "a suit in equity under the statute"; in Wall v. Magnes (Colo.), 30 Pac. 57, as a simple recognition in statutory form of "the familiar chancery proceeding" and by which "the scope of the equity proceeding thus defined is broader"; and in Goldsmith v. Gilliland, 22 Fed. 866, Deady, J. terms it "in the nature of a 'bill of peace.'" As a consequence it must include more than the remedies over which chancery courts have primary jurisdiction and more than where equity has authority to determine adverse claims to equitable **estates** and **interests**, the form of the bill being by statute abridged and controlled. Provision is made for actions involving tax assessments, liens and charges, by the territory, and creates an additional scope in equity jurisprudence.

Union & Co. v. Warren, 82 Fed. 520.
Ely v. R. R. Co., 129 U. S. 291.
Parley &c Co. v. Kerr, 130 U. S. 256.

The statute may be divided into: (1) The name of the remedy; (2) The subject matter in which the plaintiff's interest is claimed; (3) the interest in the subject matter; (4) the defendant who claims adversely; (5) the estate or interest claimed adversely; and (6) the determination of the title.

1. The name of the remedy, to-wit "quiet the title," with relation to chancery remedies is convenient, but is misleading as to the true nature of what is to be quieted. It is the interest that is to be determined and quieted and in this sense is a broader term than title, which is generally defined as "The means whereby the owner of land has the just possession of his property," and this "means" includes possession, right of possession, and the right of property. And. Dict., **Title.** The words "estate or interest" as used in the statute show that the latter is intended to have a different and more extended meaning than the former.

Interest is broader. It not only includes all these, severally and in combination, but it includes degrees and quantity of estate from freehold to estates in possession and this makes the meaning broader even than estates. It includes estates legal and equitable. It includes every right which cannot or need not be defined. It is any advantage that may be added to words of more definite meaning that no conceivable claim may be omitted. And. Dict. Interest. As here used it covers, the quieting of interests in statutory or vendors liens, licenses, statutory limited grants of possession, possessory rights, and then on up through the various degrees of estates and interests. In this the equitable jurisdictional element of being in possession is wanting.

2. The term "real property" as here used is something more than "lands, tenements, and hereditaments" in its comprehension of "all things of a permanent nature" or affixed to the earth surface by man; it includes possession, right of possession, right to property in all its degrees of estate, and whether such estate is legal or equitable. This remedial statute "possesses no limitation or restrictions, and we see no reason why it does not vest in the holder of an equitable title the right to come before the court, and have his equities declared superior to any and all opposing equities. If there are outstanding and antagonistic equities, we know of no sound policy which would deny claimants thereunder an adjudication upon them by virtue of the provisions of this section."

Tuffree v. Polhemus (Cal.), 41 Pac. 808.

The interest claimed by the party bringing the suit may not be exclusively a degree of estate, but may be more comprehensive or less definite in its measure.

5. The adverse estate is here used in its technical correct sense which is a definite denomination of a measure of interest, such as degree of estate, while interest is used in its broader

sense.

6. The determination of the title means the determination of the greater, or paramount, or priority, or right in estate or interest. Each may have estates of different measure or degree. Each estate may be determined in favor of each party and yet the greater estate be determined. As an instance, under this statute priority of mechanics' liens, or conveyances from a common grantor, or right of possession to public lands may be determined. Thus: A leaseholder estate may be quieted against a third person while the freehold estate is in the landlord and yet, the "title to real property," in its broadest sense, to-wit: The freehold estate of the landlord, is neither disturbed or determined. It is unlike the application of the term "Real property" where degrees of estate are the context as in judgment lien statutes, for here the term from its very necessity must have a more extended meaning and is a clear illustration that "the peculiar sense in which a word is used must be determined by the context. Pot. Dwarris Stat. (1st Ed.) 196, 201.

The complaint in this case is a lucid illustration of the argument. It alleges. (Tr. p. 1.) The plaintiff says: "That she is the owner of those certain unpatented, lode and contiguous group of mining claims, situate * * * That the plaintiff is credibly informed and believes the defendants and each of them make some claims adverse to the plaintiff." The statute creates the form of the complaint. It is alleged that she is the "owner." Anderson in his dictionary, says: "The owner is he who has dominion over a thing which he may use as he pleases, except as restrained by law, or by an agreement. It includes any person having a claim or interest in all the property though less than the absolute fee." "Owner" has "no precise legal signification and may be applied to any defined interest in any estate." Gitchell v. Kridler, 84 Mo. 476. In Lose v. Sullivan, 38 Mich. 171,

a more extended construction is given to the word "owner," for "as applied to real property, it includes any person who has the use of property, control or occupation of the land, whether his interest in it is absolute fee or less than a fee."

Dillman v. Nadelholver, 7 N. E. 86.

Do not these definitions well apply to the case at bar? It is an "ownership in unpatented lode mining claims," the complaint alleges, and the act of Congress defines the nature and character of the estate in unpatented mining claims.

Assignment of Error Two.

> If it should be determined under assignment of error one, that judgment liens in this territory attach to unpatented mining claims, then the question arises: Was the lien extinguished by the conveyance of the mining claims, under the deed of the judgment debtor (E. G. Wager) and his co-owners, to the McCabe Extension Mining and Milling Company, dated August 27, 1900, and the delivery of possession contemporaneously therewith of the mines to the company, an extinguishment of the judgment lien? (Tr. 47. Fdgs. 8-9-10.)

With the delivery of this conveyance the grantors placed the corporation in the actual and exclusive possession. The corporation and the plaintiff as its assignee, ever since have been and the latter is now in such possession, performing each and every year the annual labor on each claim while the corporation and the plaintiff have expended more than $40,000 in improvements since that deed was delivered. Since August 27, 1900, the grantors of the corporation—Wager (the judgment debtor), Wood and Ling—have not been in the possession of any of said mining claims, nor have they since done any annual labor thereon. (id.)

The grant is one of location followed by right of possession with permission to operate: subject to non-commission of waste by cutting timber, etc.; of inheritance and right of purchase. It is subject to conditions subsequent, to-wit: **Abandonment**, and

forfeiture, the latter including advertising out and failure to do the annual labor. It was undoubtedly the intention of Congress to make this grant a personal one to the locator, and to his heirs, and to his assigns, which could not be divested by an involuntary abandonment. Like homesteads, pre-emptions and other like government grants, it could not be the subject of involuntary assignment through sales under execution, attachment, or other involuntary lien. If it had been intended otherwise a word of more enlarged meaning would have been used in the place of "assigns," for in this sense it "is limited to an assignee in fact, and does not comprehend an assignee by operation of law. It would be regarded as a strange construction of the word to extend it to a sheriff, or the creditors whom he represents by reason of the levy of an attachment."

Burlington Nat. Bank v. Beard (Kan.), 42 Pac. 321.

Such grants are to be construed in favor of the government and such grantees. True, this contruction would upset the mining lien laws of and a great number of titles in lode mining States were it to be enforced, but that has been overcome by a long line of decisions, founded on public policy, which, in effect, judicially legislates into the act, for the protection of accrued interests under involuntary assignment, a word of larger meaning than the one used. However, such legislation does not detract from the degree of estate, the quantity of rights granted, or interpretation as applied to the judgment lien statute here. A judgment lien must attach to that character of estate which the debtor cannot, by his act, voluntary or involuntarily, as by conveyance, judicial sale, abandonment or forfeiture, divest the judgment of its lien, for, in judgment liens the estate must be such that the judgment creditor is secured against such acts.

The elements of conditions subsequent as applied to this grant are:

First: Forfeiture.

Second: Abandonment.

Forfeiture. This may occur through advertising out where the estate is abandoned to the co-owner, by virtue of a remedy provided by the statute of grant; and, by failure to do the whole annual labor for a given year, where the estate reverts to the public and becomes unappropriated public lands.

Abandonment. This term is used in a broader sense than forfeiture. It is a constituent element in forfeiture, for there can be no forfeiture to the co-owner or to the government without abandonment. There is no distinction between the two as applied to a loss of the estate by either of them, while abandonment includes loss of the estate to third parties. The acts of the locator in abandoning not only includes the locator's personal actions, intentions, and words, but writtings, as by a conveyance.

Abandonment is created by:

1. Facts constituting a mixed question of law and fact, and,
2. Facts constituting a conclusive act in law.

As to proposition 1: Abandonment is a mixed question of law and fact when it is without a written conveyance, such as giving up the possession without any intention to return. Here the fact of leaving and the fact of intention not to return must be found and determined against the locator, and when so found the law presumes abandonment in law.

Black v. Elkhorn &c Co., 163 U. S. 445.
Lindly on Mines, 643-4.

As to proposition 2: Abandonment is conclusive where there is a conveyance and surrender of possession to the assignee, as there is included in the conveyance both the leaving and intent, for.

> "What could be better evidence of intention to abandon than an actual conveyance of his right to another, ceasing to do any work thereon, and the giving up of his possession in accordance with his conveyance, The

abandonment by simply leaving the land is no more efficacious than conveying his rights and also leaving the possession without any intention of returning."

Black v. Elkhorn Mg. Co. Supra.
Herron v. Eagle M. Co., 61 Pac. 417.
Phoenix &c Co. v. Scott, 54 Pac. 779.
McAllister v. Hutchinson, 75 Pac. 40.

The term or tenure of this mining grant terminates on abandonment or forfeiture, for "An abandonment of it by leaving it, not intending to return, or a conveyance of his interest, to a third party would seem equally to terminate that interest and effectually to bar any possible future claim. **The interest granted by the United States was of such a nature that a conveyance of Black's right to the possession terminated it to the same extent as if it had been forfeited by non-performance of the condition provided for in the statute."** Black v. Elkhorn, Supra. In that case it was held that the grant of a patent to a mining claim did not create a class of real property to which a dower estate would attach. Dower is sometimes termed an estate for life; at other times a contingent interest; it again is called inchoate dower, and by either term it is an estate in land, and if such estate does not attach to a grant of a patent to a mining claim why should a general lien under a docketing statute, as is in question here, attach to an unpatented mining claim, especially after conveyance made. Is it not by the same force of reason that a judgment lien should be terminated by abandonment through conveyance or forfeiture of the estate in such mining claim.

In Moore v. Pitts, 53 N. Y., 90-91, Moore had given a lease to Hall for life. There was a condition written that the lessee "will not sell or assign this lease," and if he "fails in the conditions of this lease, the said Moore will be at liberty to forfeit the lease." Hall assigned the lease to Gillman without the consent of the lessor, and the lessor elected to terminate the lease.. In the meantime Gillman, as the holder of a judgment lien against Hall

and the leasehold, sold the leasehold estate under execution and transferred his interest to Pitts. It was held: "The lien of Gillman's judgment could only attach to such estate as Hall had in the premises. If that estate was subject to be divested by the breach of any conditions subsequent, any such breach as would divest the estate would of necessity destroy the lien." In Stockett v. Howard, 34 Md. 121, it was said: That a judgment lien obtained during the term of a lease is a lien on the term only and ceases to be a lien on the expiration of the term. In the case at bar the term expired with the delivery of the deed of the judgment debtor, and the transfer of possession and with that delivery of deed and transfer of possession went extinguishment of the judgment lien in question.

The authority that creates the power to discover, locate and operate mines (the acts of Congress relating to mining claims) creates the conditions precedent and subsequent, upon which the rights may be held. Among the conditions subsequent are: Forfeiture to the co-owner by advertising out; and forfeiture or abandonment to the government, whereby the privileges revert to the public, or, are abandoned to another. These conditions subsequent the Act of Congress makes personal in the individual. The granted privileges are continued at his will. He is the sole judge of the right to maintain or abandon the estate. No judgment lien creditor can call him to account by laying his acts of abandonment as fraudulent **per se.** It is a part of the law of the land, and the law under which the judgment creditor here claims. As the case now stands, with title quieted in the appellee as to an undivided one-fourth estate in these claims, the appellant and appellee are both claiming under a common grantor—the act of Congress. It is elementary that the holder of title must take notice of conditions subsequent in previous muniments of title which, here, extends back to the acts of Congress, to say noth-

ing of the rule, that every person must take notice of the public laws of the land. The judgment lien creditor is presumed to know of a condition subsequent attached to an estate granted by an act of Congress; he is presumed to know by reference to the recorded deed, of the acts of abandonment by the judgment debtor; he is presumed to know that the judgment debtor had no interest in the mining claims at the time of the levy of the execution dated November 29, 1904, long after the conveyance to the company, and that such levy was subsequent and subject to the rights of the appellant; and, he is presumed to know that the judgment debtor had not performed any annual labor upon the mines since 1900 and that the appellant and her grantor had maintained the annual labor since that year.

Assignment of Error Three.

> There was error of law in holding that the levy made under the execution tested November 29, 1904, issued upon the said judgment of Bennett v. Wager, created a special lien against said property that related back to the date of the docketing of said judgment, and that the sale of said Wager's interest in said mining claims under said execution to the appellee vested in him an interest or title prior and paramount to the interest, possession and title of the appellant.

Our statute of execution enlarges the scope of the writ at common law and extends the right of levy upon interests in lands which the judgment lien statute does not reach.

> Par. 2565 R. S. 1901 reads: "All goods, chattels, moneys and other property, both real and personal, not exempt by law and all property and rights of property seized and held under attachment in the action, are liable to execution. Shares and interests in any corporation or company, and debts and credits choses in action, and all other property, both real and personal, or any interests, legal or equitable, in either real or personal property not capable of manual delivery, may be levied upon and sold under execution."

Par. 345 provides that "The writ of attachment may be levied on such property, and none other as is or may be by law, subject to levy under the writ of execution."

It is from these statutes that the sheriff derives his authority to levy an execution or attachment on legal and equitable interests in real property.

It is a general rule that where there is a subsisting judgment lien and there is a subsequent levy of execution, within the period of limitations, that the levy dated from the date of the attaching of the judgment lien. However, if there is no valid subsisting judgment lien upon the property levied upon by execution, the lien dates only from the date of the levy.

Jeffry v. Moran, 101 U. S. 285.

Sommerville v. Stockton Milling Co., 76 Pac. 246.

The right of levy is not dependent upon the judgment lien. The two liens are independent of each other. They derive their powers from separate and independent statutes. Each may lapse without the other. They may be subject to different limitations of estate, and different statute of limitations. They act in conjunction only where the general lien is a legal valid one, and then, only, can the latter lien be coupled up with the lien of the levy and the latter lien be carried back to the general lien.

Assignment of Error Four.

> The judgment is contrary to the law of the land, in that an unpatented mining claim is not the subject of a judgment lien, and if it were, the lien was destroyed by the judgment debtors abandonment of August 27, 1900.

Appellant contends that the law is, that judgment liens in in this territory do not apply to the estate of a locator in an unpatented mining claim. That if the court holds otherwise, then it is contended that the lien was destroyed by the termination of the estate through abandonment of possession to, and convey-

by the judgment debtor to the corporation August 27, 1900.
er, that the levy of the execution dated November 29, 1904,
ot give a special lien that related back to the date of
dgment, to-wit: December 23, 1899, and being subsequent
e abandonment by the judgment debtor the plaintiff was
ed to a judgment quieting her interest in the whole of the
mining claims against all the defendants in the case, with

E. M. SANFORD,
Attorney for Appellant.

No. 60.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907

[redacted]

PRISCILLA BRADFORD, Appellant,

vs.

ROBERT E. MORRISON, Appellee

BRIEF OF APPELLEE

Appeal From Supreme Court, Territory of Arizona

ROBT. E. MORRISON,
In Propria Persona.

(20,667)

Office Supreme Court, U. S.
FILED.
OCT 10 1908
JAMES H. McKENNEY,
CLERK.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907

No. 280

PRISCILLA BRADFORD, Appellant,

vs.

ROBERT E. MORRISON, Appellee

BRIEF OF APPELLEE

The sole question presented for decision in this case is DOES THE LIEN OF A GENERAL JUDGMENT ATTACH TO AN UNPATENTED MINING CLAIM UPON THE DOCKETING OF THE JUDGMENT UNDER THE LAWS OF THE TERRITORY OF ARIZONA ?

The judgment involved in this litigation was docketed in the office of the Clerk of the District Court on the 30th day of December, 1899.

The statutory law on the subject of judgment liens at the date of the docketing of this judgment will be found in Act. No. 50 of the Session Laws of 1891, of the Territory of Arizona, page 50, Sec. 4, which is as follows:

> Every such judgment when so docketed, shall for a period of five years from the date of the rendition thereof, be a lien on the REAL PROPERTY in the county where the same is docketed, except the homestead of every person against whom such judgment shall be rendered and docketed, and which he may have at any time thereafter within said period of five years.

It is conceded and the record shows that at the time of the docketing of this judgment, E. G. Wager, the judgment debtor, was the owner of an undivided one-fourth interest of record in the Blind Girl, the Henry Clay, and the George Washington mining claims, situate in Big Bug Mining District, Yavapai County, Arizona.

The appellee herein contends that unpatented mining claims, for the purpose of establishing a judgment lien thereon, are included under the term REAL PROPERTY as mentioned in the statute above quoted.

That unpatented mining claims are real estate is supported not only by the statutory law of the Territory of Arizona, but by the decisions of the Supreme Court of the United States. We have no quarrel with opposing counsel upon the proposition presented by him involving the question of whether or not real estate was the subject of a judgment lien under the feudal system and the common law, and therefore will not follow him in that line of argument. The question resolves itself into one of construction of the statute above cited.

Counsel for appellant himself has cited various sections of our statutes declaring that for the purposes thereof unpatented mining claims shall be considered real estate. In addition to those sections we direct the Court's attention to Title XII., R. S. A., 1901, Conveyances, Sec. 1:

> Sec. 1. No estate of inheritance or freehold or for a term of more than one year, in lands or tenements, shall be conveyed from one to another unless the conveyance be declared by an instrument in writing, subscribed and delivered by the party disposing of the same, or by his agent thereunto authorized by writing.
>
> Sec. 13. The term "land," as used in this title, is declared to mean and include mines and mining claims.

This would apparently connect all of our statutes which

in any way refer to mining claims as being considered real estate.

The Supreme Court of the United States in Forbes vs. Gracey, 94 U. S. 762, (24 L. 313-314,) uses this very significant language, referring to unpatented mining claims:

> "They are property in the fullest sense of the word, and their ownership, transfer and use are governed by a well defined code or codes of law, and are recognized by the States and the Federal Government. This claim may be sold, transferred, mortgaged and inherited, without infringing the title of the United States."

In the case of Belk vs. Meagher, 104, U. S. 279, (26 L. 735-737), the Supreme Court of the United States says:

> "A mining claim perfected under the law is property in the highest sense of that term, which may be bought, sold and conveyed, and will pass by descent. Forbes vs. Gracey, 94 U. S., 767. There is nothing in the Act of Congress which makes actual possession any more necessary for the protection of the title acquired to such a claim by a valid location, than it is for any OTHER GRANT from the United States."

Justice Elliott in McFeters vs. Pierson, 24 Pac. 1076, (Colorado) holds that an unpatented mining claim is real estate, and citing a number of authorities in support of this position, including Forbes vs. Gracey, and Belk vs. Meagher, supra, declares that title to mining claims passes by descent or purchase the same as other real property, and reaches the conclusion,

> "Thus it appears that a mining claim on the public domain is REAL PROPERTY, and the subject of complete ownership as a claim."

In the case of Hopkins vs. Noyes, 2 Pac. 280, (Montana), the following language is used:

> "The possessory title to a mining claim ought to

> be conveyed by a deed. Such a title is real estate. It is a GRANT by the government to the locator of an interest in the public domain. Robertson vs. Smith, 1 Mon. 414. A location as provided by law, and possession in compliance with the local rules and customs, gives to the locator such an interest in the ground located, as that the government has no interest or estate therein that can be granted or conveyed to any other person; and in such case the government holds the naked title in trust for the locator or his assigns. Having heretofore held, (Robertson vs. Smith,) that the locator takes, as by GRANT from the government, it necessarily follows that the thing granted is real estate. Personal property is not conveyed by grant. The term 'grant' is only applicable to transfers of real property. 2 Washburn on Real Property, 517."

Counsel for appellant has cited several Oregon cases in support of his contention that appellee has no lien upon the property described in the complaint by reason of the general judgment. It will be noticed by the Court that all of these decisions apparently depend upon the Oregon statute, and the Oregon courts following their statute have a leaning towards the idea that the owner of a mining claim has merely a possessory title, and that this should not be treated as real estate in any sense of the word.

Appellee refers to the case of Butte Hardware Co. vs. Frank, et al., 65 Pac. 1, from the Supreme Court of Montana, and insists that it presents practically the same facts, and without question the same statute, involved in the case at bar. The Court says:

> "The question of whether a judgment lien attaches to an unpatented mining claim is new to this jurisdiction and is not devoid of difficulty. Sec. 1197 of the Code of Civil Procedure provides that 'immediately after filing the judgment roll, the clerk must make the proper entries of the judgment under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it becomes a lien upon all

real property of the judgment debtor not exempt from execution in the county owned by him at the time, or which he may afterwards acquire, until the lien ceases. The lien continues for six years unless the judgment be previously satisfied.'"

The Court then asks the question, "Is an unpatented mining claim real property of the owner?" and answers in this language·

> "This question must be answered in the affirmative. There is no need to argue this point as it seems to be settled by authority that unpatented mining claims are real estate. Robertson vs. Smith, 1 Mon. 410; Hopkins vs. Noyes, 2 Pac. 280; Tibbitts vs. Ah Tong, 2 Pac 759."

The Court then uses the language of the Supreme Court of the United States:

> "They are property in the fullest sense of the word. They may be sold, transferred, mortgaged, and inherited without infringing the title of the government. They may be sold to enforce a lien for taxes. Forbes vs. Gracey, 94 U. S. 762, 24 L. Ed. 313."

And citing also State vs. Second Judicial Dist. Ct., 24 Mon. 330, 61 Pac. 882, the Court continues:

> "We can not do else, in the light of authority, than hold that unpatented mining claims are real estate, and that therefore a judgment duly docketed as provided in Section 1197 supra, is a lien upon them, with all other real estate belonging to the judgment debtor."

The learned judge who wrote the opinion in this case discusses the proposition of abandonment raised by counsel for appellant that upon a locator deeding his property he commits an act of abandonment, and uses this language:

> "It would be absurd to permit sales for the benefit of the vendees, and then declare such sales proof of abandonment of all rights of the grantor."

In the opinion of the Supreme Court of the Territory of

Arizona upon this case, 84 Pac. 6, the Court says:

> "The action brought by the plaintiff herself (appellant herein) to quiet her title is brought under the provisions of the statute authorizing actions to quiet title to real property, and can only be maintained under the statute upon the theory that such interest in the mining claims is real property."

The statute referred to is found in R. S. A., 1901, Title LXXI., Chap. 1, Action to quiet title, which begins:

> "Sec. 1, An Action to determine and quiet the title to REAL PROPERTY may be brought by any one having, or claiming, an interest therein, * * * ."

In conclusion appellee respectfully insists that the statutory law of Arizona, the decisions of the Supreme Court of the United States, and authorities cited herein from State courts, all support with great firmness appellee's position that in the Territory of Arizona, upon the docketing of a general judgment a judgment lien attaches to unpatented mining claims.

The judgment of the lower court should be affirmed, with costs.

Respectfully submitted,

ROBT. E. MORRISON,

In Propria Persona.

BRADFORD *v.* MORRISON.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

No. 60. Argued January 7, 1909.—Decided February 23, 1909.

The title of a locator to a mining claim located under § 2322, Rev. Stat., is not only property, but property which, in addition to being sold, transferred and mortgaged, is also capable of being inherited without infringing the title of the United States.

Under the laws of Arizona, in force at the time, real property upon which a judgment was a lien included mining claims.

Title to a mining claim acquired by sale under lien of judgment is subject to forfeiture if conditions subsequent, such as the doing of necessary work, are not performed.

Black v. *Elkhorn*, 163 U. S. 445, holding that widow's dower did not attach under the law of Montana to the mining claim involved in that case, distinguished.

THIS is an appeal from a judgment of the Supreme Court of the Territory of Arizona, affirming a judgment of the District Court of Yavapai County, in that Territory, quieting the title to several mining claims involved in the action.

The appellant brought the action for such purpose under the provision of a statute permitting it, against Morrison, the appellee, together with Elmer R. McDowell and Thomas D. Bennett. McDowell and Bennett made default, but Morrison, the appellee, as the assignee of Bennett, duly filed his amended answer, which contained a special denial that the appellant was the owner of the property described in her complaint, and he then set up that he was the assignee of one Thomas D. Bennett of a certain judgment, which was recovered in the same court in which this proceeding or action was brought, which judgment was for the sum of $2,730.25, and was against the two individuals, Tom Taylor and E. G. Wager, which was docketed December 30, 1899. The case was submitted to the trial court on an agreed statement of facts, and the trial resulted in a judgment quieting plaintiff's interest in the undivided three-fourths of the claim as against the defendants, and quieting appellee Morrison's title as against plaintiff and the other defendants in the remaining one-fourth of such claim.

An appeal taken to the Supreme Court of the Territory resulted in the affirmance of the judgment, and the plaintiff then took an appeal to this court upon a statement of facts found by the Supreme Court.

From this statement of facts it appears that the mining claims in controversy are unpatented lode claims. The judgment in *Bennett* v. *Wager* was rendered December 23, 1899,

and docketed December 30, 1899. On December 23, the day of the recovery of the judgment, and continuously thereafter until August 27, 1900, the actual coöwners and possessors of the mining claims were one D. C. Wood, the owner of a one-half interest, and E. G. Wager and Reese M. Ling, each a one-quarter interest. It is in regard to Wager's interest in the claims at that time, December 30, 1899, that the controversy has arisen.

On August 27, 1900, Wood, Wager and Ling, by mining deed, conveyed their interest in the claims to the McCabe Extension Mining & Milling Company, a corporation, and contemporaneously with the delivery of that deed the grantors placed the corporation in the actual and exclusive possession of the claims. The corporation, and its assignee, the plaintiff, ever since that time have been in the actual and exclusive possession of the claims, and have performed each and every year since the year 1900 to the date of the findings, which were filed January 23, 1907, annual labor in excess of the amount of $100 per annum upon each of said claims, and the corporation has during its possession of the claims expended more than $40,000 in improvements in and on the mines.

Neither Wager, Wood nor Ling has been in possession of the claims since August 27, 1900, when they conveyed them to the corporation.

The appellant claims under conveyance executed pursuant to judicial sales made under writs issued on a judgment obtained against the corporation subsequently to the conveyance made to it, and appellant is in the present actual and exclusive possession of the claims. Under one of these sales a deed was executed and delivered to her on October 26, 1904, which, it is said, related back to November 6, 1902, the date of the filing of the lien of the judgment against the company. On November 29, 1904, an execution was issued on the judgment in *Bennett* v. *Wager et al.*, and levied upon the interest which Wager had in the claim at the time judgment was recovered against him (December 30, 1899), and the sale was made un-

der that levy, December 22, 1904, to the appellee Morrison, and a certificate of sale was issued to him for that interest.

Mr. E. M. Sanford for appellant:

The docketing of the Bennett-Wager judgment on December 30, 1899, did not create a general lien on the unpatented mining claims in controversy. Without the aid of the statute there can be no lien under the term "real property" upon chattels, real or equitable estates, without the addition of equivalent language which would include such chattels and estates. *Jeffrey* v. *Moran*, 101 U. S. 285; *Merry* v. *Hallet*, 2 Cowen, 498; *Westervelt* v. *The People*, 20 Wend. 417; *People* v. *Irwin*, 14 California, 434; *Riley* v. *Nance*, 31 Pac. Rep. 1126; *Sommerville* v. *Stockton &c. Co.*, 76 Pac. Rep. 246; 2 Freeman on Judgments (4th ed.), § 348.

At common law a judgment was not a lien on mere equitable estates. *Massingdale* v. *Downes*, 7 How. 760; *Morsell* v. *Bank*, 91 U. S. 360; *Cooke* v. *Avery*, 147 U. S. 389; 12 Am. Enc. of Law (1st ed.), 103, note 3; *Sommerville* v. *Stockton Milling Co.*, 76 Pac. Rep. 246; *Bloomfield* v. *Eason*, 45 Pac. Rep. 681; *Merry* v. *Hallet*, 2 Cow. 497; *In re Estes*, 3 Fed. Rep. 141; *Sweezy* v. *Jones*, 21 N. W. Rep. 47; *Nessler* v. *Neher*, 26 N. W. Rep. 47; *Jenkins* v. *Fahey*, 73 N. W. Rep. 362.

As to the nature of the interest which a judgment debtor holds as locator or assignee of the locator, in an unpatented mining claim, see *Black* v. *Elkhorn &c. Co.*, 163 U. S. 445; Ballinger on Mines, 54; 10 Am. & Eng. Enc. of Law (2d ed.), 404, note 1; *Salem &c. Co.* v. *Stayton &c. Co.*, 33 Fed. Rep. 154; *McAllister* v. *Hutchinson*, 75 Pac. Rep. 41; *Wheeler* v. *West*, 11 Pac. Rep. 73; *Cowles* v. *Kidder*, 41 Pac. Rep. 16; 13 Am. & Eng. Enc. Law (1st ed.), 539; Lindley on Mines, 860; *Benson &c. Co.* v. *Alta &c. Co.*, 145 U. S. 128.

Mr. Robert E. Morrison, appellee, *pro se*, submitted:

Unpatented mining claims, for the purpose of establishing a judgment lien thereon, are included under the term "real

operty," as used in the statute herein in question. See tle XII, R. S. A., 1901, Conveyances, §§ 1 and 13; *Forbes* v. *acey*, 94 U. S. 762; *Belk* v. *Meagher*, 104 U. S. 279; *McFeters* *Pierson*, 24 Pac. Rep. 1076; *Hopkins* v. *Noyes*, 2 Pac. Rep. 0; 2 Washburn on Real Property, 517.

Mr. Justice Peckham, after making the foregoing state- ent, delivered the opinion of the court.

The appellant asserts that no lien was created against the terest of E. G. Wager (the judgment debtor), in the unpat- ted claims in controversy by reason of the docketing of that dgment on the thirtieth of December, 1899. She also asserts at there was an abandonment in fact and in law by Wager his interest in the mining claims, by reason of the making d delivery of the deed by himself and others, dated August 27, 00, to the corporation mentioned and by contemporaneously erewith putting the company in the peaceful and exclusive ssession of the claims. She further urges that the levy made der the execution of November 27, 1904, issued upon the dgment in *Bennett* v. *Wager*, created no special lien against e property that related back to the docketing of the judg- ent and that the sale of Wager's interest in the mining claims der that execution to the appellee vested in him no interest title prior or paramount to the interest, possession and title the appellant, and generally the appellant asserts that the dgment appealed from is contrary to law, in that an un- tented mining claim is not the subject of a judgment lien, d if it were, the lien was destroyed by the judgment debtor's andonment of the claim on August 27, 1900.

The statute under which the question arises is Act No. 50 the Session Laws of 1891 of the Territory of Arizona, page 50, 4, which reads as follows:

"Every such judgment when so docketed shall, for a period five years from the date of the rendition thereof, be a lien the real property in the county where the same is docketed,

except the homestead, of every person against whom such judgment shall be rendered and docketed and which he may have at any time thereafter within said period of five years."

Now, at the time of the docketing of this judgment E. G. Wager, the judgment debtor, was the owner of the undivided one-quarter interest, of record, in the mining claims named in the complaint, and the appellee contends that these unpatented mining claims were real property within the meaning of the above statute, for the purpose of establishing a judgment lien thereon.

The character of the possession of mining claims and the title under which they are held has been frequently adverted to in the decisions of this court, as well as in the many decisions of the courts of what may be termed "mining" States and Territories.

By § 2322 of the United States Revised Statutes it was enacted that "The locators of all mining locations heretofore made or which shall hereafter be made on any mineral vein, lode or ledge, situated on the public domain, their heirs and assigns . . . shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes and ledges throughout their entire depth; . . ." 2 Comp. Stat. 1425.

In *Forbes* v. *Gracey*, 94 U. S. 762, 767, it is said the claims of this nature "are the subject of bargain and sale, and constitute very largely the wealth of the Pacific Coast States. They are property in the fullest sense of the word, and their ownership, transfer and use are governed by a well-defined code or codes of law, and are recognized by the States and Federal Government. This claim may be sold, transferred, mortgaged and inherited, without infringing the title of the United States."

In *Belk* v. *Meagher*, 104 U. S. 279, it was held that actual possession of the claim was not essential to the validity of the title obtained by a valid location, and until such location was terminated by abandonment or forfeiture no right or claim to the property could be acquired by an adverse entry thereon with

view to the relocation thereof. Mr. Chief Justice Waite, in delivering the opinion of the court, referred to the language used in *Forbes* v. *Gracey*, *supra*, and reaffirmed the same.

In *Manuel* v. *Wulff*, 152 U. S. 505, 510, Mr. Chief Justice Fuller, in delivering the opinion of the court, again repeated the language in *Forbes* v. *Gracey*, *supra*, and again reaffirmed its correctness (at page 510). To the same effect is *Elder* v. *Horseshoe Mining & Milling Co.*, 194 U. S. 248; and see *Elder* v. *Wood*, 208 U. S. 226.

We thus find that the title of a locator to a mining claim is not only property, but it is property which, in addition to being sold, transferred and mortgaged, is also capable of being inherited, without in any manner infringing the title of the United States.

The legislature of Arizona, by a statute which was in force in December, 1899, defined the meaning to be given the term "real property" in the construction of statutes, as coextensive with lands, tenements and hereditaments. This statute is said to have been repealed September 1, 1901, before the execution was issued in this case, and was reënacted March 5, 1907. Session Laws, 1897, chapter 10, page 8, § 5.

That legislature, also, in the title of the Revised Statutes relating to conveyances, provided that "The term 'land,' as used in this title, is declared to mean and include mines and mining claims;" and the statute relating to fraud and fraudulent conveyances (Arizona Statutes, paragraph 2708) reads: "The term real estate, as used in this title, shall be deemed to include mines and mining claims." By paragraph 2948 of the same statutes it is enacted that "The words 'real property,' whenever used in this title, is taken to include mines." The statute relates to the limitation of actions, and provides for the remedies which may be enforced in mining claims.

It is not contended that these special statutes, except the first, thus referred to, relate to or affect judgment liens on mining property as real property, but they show the general intent of the legislature to include claims of such a nature in

speaking of real estate or real property. But the statute defining the meaning of the term "real property," was in force when the Wager judgment was obtained, and the statute made property that might be inherited, real property, upon which a judgment would be a lien. Taking the decisions of the courts, some of which are above referred to, and considering the general nature and meaning of the legislation of the Territory, we conclude that the words "real property" covered mining claims. The lien of the judgment therefore existed when the conveyance by Wager was made in August, 1900, and that conveyance would be subject to that lien.

Of course, if the conditions subsequent, as the doing of the necessary work, were not performed, the title would be subject to forfeiture.

The case of *Black* v. *Elkhorn*, 163 U. S. 445, has been referred to as in some way inconsistent with the decision of the court below in this case. All that was there decided was that the plaintiff, widow of the locator, was not entitled to dower under the statutes of Montana on that subject with reference to a mining claim under the statutes of the United States.

This court held that under the Federal statute no right was granted to the wife of a locator, either present or contingent, and that the Government, being the owner of the land, could impose its own terms upon which to grant any right, whether of possession or of purchase. The character of the interest of a locator in a mining claim, as held in the cases above cited, was referred to and was not questioned. The case turned upon the peculiar nature of the widow's claim for dower in such a case and that such interest did not attach to mining claims. That as the Government still retained the title, the locator did not take such an estate in the claim that dower attached to it.

The judgment under which the appellee claims having become a lien under the Arizona statute upon being docketed in December, 1899, the subsequent conveyance of the interest of the judgment debtor to a third party did not clear the prop-